In this document, I make statements and accusations of criminal behavior by judges and others. These statements must be understood to be my opinion. I've been denied the right to legally establish their truth. The documentation I provide here will support my claims for the reader.

Skip this analysis and go directly to ***Beres v. United States* (2011)**

Introduction and Analysis of Beres v. United States (2011)

by John Rasmussen

Introduction:

This document analyzes *Beres v. United States* (2011) and compares it to the decisions in *Ray v. King County* and *King County v. Rasmussen.* These three lawsuits produced opinions which construe the 1887 SLS&E Hilchkanum right-of-way deed to the Seattle Lake Shore and Eastern Railway (SLS&E) with very different outcomes. The *Ray* and *Rasmussen* opinions are criminal acts from the bench which cover-up the East Lake Sammamish federal tax fraud scheme by deciding the Hilchkanum deed granted fee simple title of the land. In contradiction, *Beres v. U.S.* (2011) correctly construes the Hilchkanum right-of-way deed to grant an easement. I'm John Rasmussen. I blew the whistle on the East Lake Sammamish federal tax fraud scheme in early 2000. I lost my *King County v. Rasmussen* lawsuit, my land, and my rights, and have been fighting to expose the tax fraud scheme ever since. A comparison of *Beres v. United States* (2011) to *Ray v. King County* and *King County v. Rasmussen* exposes the dishonesty of the *Ray* and *Rasmussen* opinions and exposes the ELS federal tax fraud scheme.

The four *Beres* opinions I present on my website resolve taking claims which resulted from the 1998 Railbanking of the East Lake Sammamish (ELS) right-of-way in King County, Washington. They are important to my website trailofshame.com because they properly construe the 1887 SLS&E Hilchkanum right-of-way deed to the Seattle Lake Shore and Eastern Railway (SLS&E) as an easement.

Beres v. United States (2005)
Beres v. United States (2010)
Beres v. United States (2011)
Beres v. United States (2012)

As I explain above, *Beres* (2011) stands in stark contrast to the three Ninth Circuit and Washington State opinions, listed below, in which judges intentionally misconstrued that same Hilchkanum deed dishonestly conveying ownership of ELS right-of-way land to King County. The three opinions listed below cover-up the East Lake Sammamish federal tax fraud scheme. The ELS federal tax fraud scheme

involves the theft of more than $10 million in land from hundreds of landowners along East Lake Sammamish (ELS). In addition, it covers-up an illegal $40 million federal tax write-off which defrauded all American taxpayers.

These three Ninth Circuit and Washington State Hilchkanum opinions are criminal acts from the bench.

King County v. Rasmussen (2001)
King County v. Rasmussen (2002)
Ray v. King County (2004)

After my land was stolen and my property rights were destroyed in Ninth Circuit courts (*King County v. Rasmussen*), my neighbors Gerald and Kathryn Ray took the identical property rights issue through the Washington State Courts. (*Ray v. King County*) The issue was ownership of the land under the ELS right-of-way. In *Ray v. King County,* the Ray's land was stolen and their rights were denied, too. Then, a number of East Lake Sammamish (ELS) landowners filed taking claims with the United States Court of Federal Claims. (*Beres v. United States*) The *Beres* opinions resolve those claims. The critical issue in both the earlier lawsuits and the *Beres* opinions was determining whether the 1887 SLS&E right-of-way deeds conveyed easements or fee simple title of the right-of-way land to the Railway. In *Beres*, claims were made by forty-nine parties, representing more than eighty-four individuals. That group included Gerald and Kathryn Ray and twenty-three other individuals basing their taking claims on the Hilchkanum right-of-way deed. In *Beres* (2010), the claim by Gerald and Kathryn Ray was dismissed due to collateral estoppel, but the other twenty-three parties basing claims on the Hilchkanum deed were allowed to proceed. In spite of the Ninth Circuit and Washington State Hilchkanum opinions providing precedent that the Hilchkanum right-of-way deed granted fee simple title to the land underlying the right-of-way, Court of Federal Claims Judge Marian Horn decided that the Hilchkanum deed, and all the other ELS deeds, granted easements. In her well organized and carefully documented opinions, Judge Horn refused to accept the dishonest findings in *Ray v. King County* even after she was advised by the judges of our Washington State Supreme Court to use *Ray* for guidance. This supports my opinion that Ninth Circuit and Washington State judges intentionally committed crimes from the bench with their *Rasmussen* and *Ray* opinions. The refusal of our Washington State Supreme Court to correct *Ray,* implicates the highest court in our State in the East Lake Sammamish federal tax fraud scheme.

Intellectually dishonesty:

As with many things in life, this *Beres v. United States* (2011) delivers some bad with the good. It is good that Judge Horn correctly applies Washington State law in

finding the 1887 Seattle Lake Shore and Eastern Railway (SLS&E) right-of-way deeds granted easements. But, it is bad that Judge Horn is intellectually dishonest with her statements protecting the judges who decided *Ray* and *Rasmussen*, and is intellectually dishonest with her statements which protect the judges of our Washington State Supreme Court who failed to correct *Ray* on appeal. Judge Horn's intellectually dishonest is discussed throughout this document. My final paragraph of this document summarizes this issue.

Introduction to *Beres v. United States* (2011)

In this *Beres* (2011) opinion, U.S. Court of Federal Claims Judge Marian Horn decides whether the original ELS right-of-way deeds to the railway granted easements or fee simple title. The plaintiffs (East Lake Sammamish landowners) claim that the Railbanking of the ELS right-of-way resulted in a taking of their land. Their claim is based on the original right-of-way deeds granting easements. This includes six 1887 SLS&E deeds, and a 1904 Quit Claim deed to the Northern Pacific Railway Company. If these deeds granted fee simple title to the railroad, the plaintiffs have no claim, and the lawsuit is over for these parties. If these seven deeds are determined to grant easements, then in subsequent rulings the Court of Federal Claims will need to determine if a Tucker Act taking occurred with the Railbanking of the BSNF East Lake Sammamish (ELS) right-of-way. To determine if a Tucker Act taking occurred, the court will need to determine if the language in the deeds, which describes the scope of the easements, supports a taking. Also, it will be necessary to determine if the chains of title lead from the original right-of-way deeds to the lawsuit claimants. Finally, the court will determine what compensation is due to the qualifying ELS landholders. Should the parties basing claims on these seven deeds fail with their claims, the eighth party in *Beres*, Warren and Vicki Beres, would continue based on the findings in *Beres v. United States* (2005). I write this in early 2017 and do not know if my former ELS neighbors have ever received compensation. I've moved away from Lake Sammamish and lost touch. I suspect my former neighbors believe that I've made it more difficult for them to get compensation because I blew the whistle on the East Lake Sammamish federal tax fraud scheme. I've always been supportive of them, but believe it's a citizen's duty to stand up against corruption like that involved with the ELS tax fraud scheme.

My primary interest in this opinion is that Judge Horn was faced with determining whether the 1887 Hilchkanum right-of-way deed to the SLS&E granted an easement or fee simple title of the land underlying the right-of-way. The Hilchkanum deed is one of the six Seattle Lake Shore and Eastern Railway (SLS&E) right-of-way deeds construed in *Beres* (2011). Earlier, the Hilchkanum right-of-way deed was misconstrued to grant fee simple title of the right-of-way land in the *King County v. Rasmusse*n and *Ray v. King County* opinions. My website, trailofshame.com, exposes the corruption and

dishonesty involved in the Railbanking of the East Lake Sammamish (ELS) right-of-way and in the subsequent *Rasmussen* and *Ray* opinions. King County, BNSF, and a local non-profit conspired to commit federal tax fraud by falsely claiming all the original ELS SLS&E right-of-way deeds granted fee simple title. This includes the six SLS&E deeds which are construed in this *Beres* (2011). BNSF then donated the land under its East Lake Sammamish (ELS) right-of-way to King County as part of its 1998 Railbanking transaction, and took a $40 million illegal federal tax write-off. BNSF and King County claimed that BNSF owned the land under its ELS right-of-way based on their intentional misinterpretation of the original ELS right-of-way deeds. They claimed all of the deeds granted fee simple title to the Railway. But, King County knew that 98% of the right-of-way was easements and that the donation was fraudulent. This fraudulent "donation" afforded BNSF the $40 million illegal federal tax write-off. The actual value of the land stolen from ELS landowners is more than $10 million, but BNSF commissioned an inflated right-of-way appraisal of $41.7 million by Arthur Andersen. This was a few years before Arthur Andersen was exposed with its Enron and WorldCom scandals. To protect the crooked lawyers and politicians in King County from being convicted of federal tax fraud, the County ran a campaign of misinformation and dishonest legal analysis to hide its crime. All of this would be resolved with an honest judiciary, but we have lost that in Washington State. Ninth Circuit and State judges in Washington were influenced to cover-up the crime with their *King County v. Rasmussen* and *Ray v. King County* opinions. (linked above) The *Rasmussen* and *Ray* opinions dishonestly found that the 1887 Hilchkanum right-of-way deed granted fee simple title of the land underlying the ELS right-of-way. These findings covered-up the East Lake Sammamish federal tax fraud scheme. I don't know exactly how the judges were influenced to issue their dishonest opinions, but the dishonest manipulation of the facts and the misapplication of the law in these opinions provides proof of their crime. The East Lake Sammamish federal tax fraud scheme appeared to be a "perfect crime" until the issue of ownership of the land under the ELS right-of-way was taken to the U.S. Court of Federal Claims. In this *Beres v. United States* (2011) opinion, U.S. Court of Federal Claims Judge Marian Horn decided whether six East Lake Sammamish SLS&E deeds granted fee simple titles or easements. The 1887 Hilchkanum right-of-way deed is one of the six.

In this *Beres* (2011) opinion, the defendant (United States) relied heavily on the *King County v. Rasmussen* and *Ray v. King County* opinions for its arguments, therefore Judge Horn was put in the position of differentiating her analysis from the findings in *Rasmussen* and *Ray.* This causes me, a victim of criminal acts by judges in *King County v. Rasmussen*, to comment often on the injustice of *Rasmussen* and *Ray.* I've tried to edit out a good portion of the anger I express in my analysis, but much remains in order for me to compare the findings in *Beres* to *Rasmussen* and *Ray*. Further, Judge Horn seemed to build unreasonable excuses for the *Rasmussen* and *Ray* judges,

which I find dishonest. So, be prepared for lots of negativity against dishonest judges in this analysis of *Beres* (2011).

Since the Hilchkanum right-of-way deed had been construed in the Washington State opinion *Ray v. King County* (2004) and had been found to grant fee simple title, there was a concern as to what weight *Ray* would be given in Judge Horn's *Beres* opinions. On a motion by the plaintiffs (ELS landowners), Judge Horn requested clarification from our Washington State Supreme Court on the state law to be used in construing the Hilchkanum deed and other SLS&E deeds. Our Washington State Supreme Court had dishonestly denied appeal of *Ray* in 2004. Our WA Supreme Court replied to Judge Horn:

> "The court is of the view that, in light of existing precedent such as Brown v. State, 130 Wn. 2d 430, 924 P.2d 908 (1996) and Ray v. King County, 120 Wn. App. 564, 86 P.3d 183, review denied, 152 Wn.2d 1027 (2004), the questions posed by the federal court are not '**question[s] of state law**... which [have] not been **clearly determined**.'" [*Beres v. United State* (2010) at page 9] (my emphasis)

Washington State law must be used by Judge Horn to construe the *Beres* SLS&E deeds, and the Washington State Supreme Court has advised Judge Horn that the findings in *Ray v. King County* (2004) and *Brown v. State of Washington* (1996) provide **clear** guidance for her to construe the SLS&E deeds. Since the Hilchkanum deed was construed to convey fee simple title in *Ray*, it would have been very simple, and justifiable, for Judge Horn to dismiss all the *Beres* claims based on Hilchkanum and the other SLS&E deeds because they all were built on the SLS&E ELS Form Deed which used identical granting language. But, she didn't.

Why did Judge Horn search for a reason to reconstrue the SLS&E deeds, when the highest court in Washington State explained to her that the ruling in *Ray* applied? Only Judge Horn can honestly explain, and I'm sure she won't. I believe Judge Horn realized that *Ray v. King County* and *King County v. Rasmussen* were criminal acts from the bench, so she refused to adopt their conclusions. I write that because Judge Horn was in a unique position to understand the *Ray* and *Rasmussen* opinions. She had many, if not all, of the documents which were presented to the *Ray* and *Rasmussen* judges. The Ray's lawyer, John Groen, was representing the plaintiffs in *Beres*. Since the same lawyer was representing the same issues before her, Judge Horn was effectively being presented with the briefings and exhibits presented in *Ray v. King County* (2004) and in the *Ray* appeal to the Washington State Supreme Court. This gave her an understanding of *Ray* that no other reviewer of those dishonest opinions would have. Without directly criticizing the *Ray* and *Rasmussen* judges, Judge Horn

refused to accept the findings in those opinions, and refused to follow the advice of the Washington State Supreme Court to adopt the findings in *Ray*. Instead, Judge Horn determined that the ELS SLS&E deeds granted easements. This includes the Hilchkanum right-of-way deed which had been determined to grant fee simple title in *Ray v. King County* and *King County v. Rasmussen*. This document analyzes how Judge Horn found reason to not adopt the findings in *Ray* and *Rasmussen*.

"Circumstances surrounding execution of the deeds and subsequent conduct of the parties"

Starting on page 4, Judge Horn identifies "circumstances surrounding execution of the deeds and subsequent conduct of the parties". These two factors are the extrinsic evidence that is considered when construing a railroad deed. When Judge Horn later analyzes *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006), she refers to the "seven plus two *Brown* factors". The "plus two" are the "circumstances surrounding execution of the deeds and subsequent conduct of the parties" she identifies here. Starting at page 4 *of Beres* (2011), Judge Horn goes through the lawsuit's seven railroad deeds identifying subsequent deeds which she later analyzes to better understand the intentions of the grantors in their right-of-way deeds. She begins her analysis of the "circumstances surrounding execution of the deeds and subsequent conduct of the parties" at the bottom of page 47 of *Beres v. United States* (2011).

Summary Judgment:

Page 12: To determine easement or fee, Judge Horn starts her analysis of the law on page 12 *of Beres* (2011). Her first order of business is to determine whether partial summary judgment is appropriate. This would be summary judgment on the question of whether fee simple title or an easement is conveyed in the ELS right-of-way deeds involved with the lawsuit. Judge Horn notes that both *Ray v. King County* and *King County v. Rasmussen* were decided by summary judgment. She also notes that, since there is nobody alive to provide testimony or refute the underlying facts, that summary judgment is deemed appropriate in *Ray*. Judge Horn then finishes her determination of whether summary judgment is appropriate with this statement:

> "Likewise in this court, there is no live testimony to present on the issue of intent of the source deed grantors, however, numerous additional documents have been introduced in this court which were not before the Washington state courts in Ray v. King County or before the federal courts in King County v. Rasmussen. All of the additional documents have been introduced for the court's

> review in the form of joint stipulations and as part of a Joint Appendix. The court, therefore, agrees that partial summary judgment proceedings are appropriate at this time." [*Beres v. United States* (2011), Page 13]

There was dishonest manipulation of the facts by the judges in *Ray v. King County* and *King County v. Rasmussen*. I believe that a jury is necessary to keep judges from committing dishonest acts like that. Judge Horn states there is no disagreement between the parties with respect to the material facts, and allows summary judgment in *Beres.* The most critical material fact in construing a deed is the intention of the parties. In Washington State common law, it's the court's duty to enforce the intention of the parties when construing a deed. With respect to "fact and law", a party's intention is a fact, and the law requires the court to enforce that intention/fact. A party's intention is determined by using the law to construe the meaning of the words of the deed, but contributing facts are also incorporated to determine the parties intentions. These contributing facts are the "circumstances surrounding execution of the deeds and subsequent conduct of the parties", explained above. I don't know how our judges have rationalized their right to use summary judgment to determine the central material fact in construing a deed, which is the intentions of the parties, when a myriad of contributing facts of varying strength and proof are used to come to that determination. While construing the words of the deed is an exercise of legal interpretation and seems appropriate for a judge, disputed contributing facts, which often have no clear legal interpretation, should go to a jury for interpretation, in my opinion. But, just as was done in *Ray v. King County* and *King County v. Rasmussen*, Judge Horn decided summary judgment was appropriate in *Beres*. I know that the rules of summary judgment were intentionally violated by the judges in *King County v. Rasmussen* but cannot determine if that happened here, in *Beres* (2011). The briefs would reveal whether summary judgment was legally appropriate. They are not available for me.

State Law applies:

Starting on page 13, Judge Horn explains that Washington State law applies in federal court for construing Washington State deeds.

The Washington State law for construing railroad deeds:

Judge Horn claims she has documents not available in *Ray* and *Rasmussen*:

Pages 13 through 31: Judge Horn discusses the history of construing railroad deeds in Washington State and explains the precedent established in the past opinions. Since she decided to ignore the Washington State Supreme Court's advice that *Ray v.*

King County (2004) and *Brown v. State of Washington* (1996) apply to her questions of applying the law, she finds reasons to differentiate her approach in construing the deeds from that used in *Ray* and *Brown*. One reason was offered on page 13 of *Beres v. United States* (2011) where judge Horn stated that "...numerous additional documents have been introduced in this court which were not before the Washington state courts in Ray v. King County or before the federal courts in King County v. Rasmussen." She was implying that she had information that was not available for those opinions. Frankly, I doubt that she had any significant new documents based on the fact that, in *King County v. Rasmussen*, we presented hundreds of pages of exhibits which were obtained from the same deed researcher that I assume provided the documents Horn referenced in that statement. I state this because, in her analysis, she references no significant document that wasn't identical to ours, or was similar with the same effect. Further, she doesn't state that she reviewed the documents we provided with our briefs to the Ninth Circuit and to the U.S. Supreme Court as a basis for her statement. So, Judge Horn claims she has new material. I doubt she does in any significant way. She undoubtedly has more pieces of paper, but sufficient documents were provided in *Rasmussen* (my lawsuit) to cause the *Rasmussen* judges to come to the same conclusions that Judge Horn makes in this opinion. I doubt that Judge Horn has any document which provides significant facts that are different than what we briefed in *Rasmussen,* and I believe was briefed in *Ray*. I make this point because Judge Horn builds an excuse to construe the Hilchkanum deed in spite of the fact she was advised by our Washington State Supreme Court that *Ray* "clearly" explained how she should proceed. The *Ray v. King County* and *King County v. Rasmussen* opinions (Hilchkanum opinions) are criminal acts from the bench, yet Judge Horn never criticizes the judges responsible for those dishonest opinions. So, Judge Horn "walks a fine line" by refusing to adopt the decisions in *Ray* and *Rasmussen*, but at the same time protecting the dishonest judges in *Ray* and *Rasmussen* by making excuses for their dishonest conclusions, or being silent about blatant dishonesty by these judges. Of course, Judge Horn does not overturn the *Ray* and *Rasmussen* opinions, she merely grants compensation to a few of the many folks defrauded by the East Lake Sammamish federal tax fraud scheme. This leaves a confusion of legal holdings along East Lake Sammamish (ELS). The folks being compensated for a taking in *Beres*, are being compensated because Judge Horn decides that they own the land under their portion of the Railbanked ELS right-of-way. But, Washington State and Ninth Circuit judges have awarded ownership of the Hilchkanum portion of that land to King County with the *Ray* and *Rasmussen* opinions. I don't know if any other ELS quiet title lawsuits have gone through the Washington State courts, but I believe that King County claims ownership of all the right-of-way land. So, even though Judge Horn determines in *Beres* (2011) that some folks own their ELS right-of-way land, their ownership is not recognized in Washington State courts.

Judge Horn: *Kershaw* provides guidance lacking in *Ray* and *Rasmussen*

On page 21, Judge Horn states:

> "Until Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Association, 126 P.3d 16, decided ten years later, the Brown case was the best available guidance on how to determine fee versus easement in railroad deeds in the State of Washington." [*Beres v. United States* (2011), Page 21]

This statement allows Judge Horn to take a fresh look at the SLS&E deeds because, as explained above, she had asked for and received advice from the Washington State Supreme Court before the Supreme Court issued *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006). So, using the later *Kershaw* opinion for guidance allows Judge Horn to ignore our Washington State Supreme Court's earlier advice to use *Ray* and *Brown* for guidance in construing the ELS right-of-way deeds.

On page 28, Judge Horn explains that *Brown* does not overturn earlier opinions, but rather simply failed to find limiting language in the deeds construed in *Brown*:

> "The State of Washington Supreme Court in Kershaw, which was decided ten years after the State of Washington Supreme Court's decision in Brown v. State, asserted that **the Brown decision had not overturned the established precedent on railroad rights of way** established in Morsbach v. Thurston County, 278 P. 686, Swan v. O'Leary, 225 P.2d 199, Veach v. Culp, 599 P.2d 526, and Roeder Co. v. Burlington Northern, Inc., 716 P.2d 855, but 'rather it distinguished them on the limited basis that none of the deeds at issue in Brown possessed language relating to the purpose of the grant or limiting the estate conveyed.' Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Ass'n, 126 P.3d at 22-23 (emphasis in original). The Kershaw court continued: **'Brown refined the principle relied on in Morsbach, Swan, Veach, and Roeder and suggests a more thorough examination of the deed is appropriate.'** Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Ass'n, 126 P.3d at 23.
>
> In turning to the deed before it, the State of Washington Supreme Court in Kershaw determined that, '[l]ike the cases finding an easement, and unlike the deeds in Brown, the word [sic] **'right of way' is used to establish the purpose of the grant and thus presumptively conveys an easement interest.'**" [*Beres v. United States* (2011), Page 28] (The **Bold** emphasis is mine.)
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> [Note: You won't find the referenced quotes at paragraphs 22-23 in the version of *Kershaw* that I link here. Those discussions are at paragraphs 18 and 20 (on pdf

page 8) in my version of *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006). I don't believe there is any difference in the content. I downloaded *Kershaw* from the internet.]

This citation is illuminating because, after participating in the East Lake Sammamish federal tax fraud scheme, King County briefed that there was a "sea change" and new "bright line rule" established in *Brown* which eliminated the prior legal precedent established in earlier Washington State railroad right-of-way opinions. Among other dishonest claims, King County briefed that *Brown* established the precedent that a railroad deed conveying a "right of way" to a railroad in its granting clause, conveys fee simple title of the land rather than an easement. King County claimed *Brown* decided that an easement was conveyed only if a separate additional statement was included which limited the deed to right-of-way use, or stated the deed was for the purpose of a right-of-way. I've given a name to this dishonesty. I call it "Norm Maleng's 'legal theory'". King County briefed this lie in order to hide its participation in the East Lake Sammamish federal tax fraud scheme. The above citation provides a statement by the Washington State Supreme Court from *Kershaw* which proves King County's "sea change" or new "bright line rule" is a lie. It proves Norm Maleng's "legal theory" is false. In the above citation, the judges of our Washington State Supreme Court explain that Brown incorporates and refines the precedent established in *Morsbach*, *Swan*, *Veach*, and *Roeder*. *Morsbach, Swan, Veach,* and *Roeder* are consistent with one hundred years of precedent holding that the grant of a "right of way" to a railroad conveys an easement. There are several ways to describe that "rule". Perhaps it is better to explain it in two parts. First, the court's duty when construing a deed is to enforce the intentions of the original parties to the deed. Second, when it's the intentions of the parties that the conveyance is for railroad right-of-way use, the deed conveys an easement, and not fee simple title of the land. This would be expressed by a statement that the deed is for the purpose of a "right of way", or that there is a statement that limits the deed to "right of way" use, or that the granting language specifies that a "right of way" is conveyed to a railroad. King County lied in its *Ray* and *Rasmussen* briefs when it claimed that a "sea change" or new "bright line rule" in was established in *Brown.* The above citation from *Beres* explains that *Brown* did not overturn long held established precedent. The citation explains that there was no "sea change".

It is easy to understand why the King County Prosecutor concocted "Norm Maleng's 'legal theory'". On behalf of King County, the Prosecutor had agreed to participate in the East Lake Sammamish federal tax fraud scheme. The Prosecutor and his staff needed to lie in order to not be prosecuted for federal tax fraud. They wanted to stay out of federal prison, so they lied. But then, the judges in *Ray* and *Rasmussen,* and the judges of our Washington State Supreme Court agreed with King County's lie.

These judges didn't directly participate in the ELS federal tax fraud scheme, so why would they participate in the crime by agreeing with the Prosecutor's dishonest legal briefing, and then illegally award the land to King County? Why would the judges of our Supreme Court deny appeal of *Ray* when they knew that **"...the words "right of way" in...the granting clause...presumptively evinces the parties' intent to convey only an easement."** (See WA Supreme Court citation below.) As shown by the above *Beres* citation, and the citation directly below from *Kershaw*, the judges of our Supreme Court knew "Norm Maleng's 'legal theory'" was a lie and that there was no "sea change" in *Brown*.

> "20 ***Brown* refined the principle relied on in *Morsbach, Swan Veach,* and *Roeder* and suggests a more thorough examination of the deed is appropriate.** Here the deed appears to contain elements characteristic of both a fee and easement conveyance. In short, the deed is in statutory warranty form, which carries a presumption of conveying fee, *Brown*, 130 Wash.2d at 438, 924 P.2d 908, but **contains the words "right of way" in both the granting clause and the habendum clause, which we have stated presumptively evinces the parties' intent to convey only an easement.** *Roeder,105 Wash.*2d at 569, 57172, 716 P.2d 855 (applying presumption in favor of easement in spite of statutory warranty nature of deed); *Swan*, 37 Wash.2d at 537, 225 P.2d 199. We thus consider whether additional analysis of the deed language using the Brown factors, set forth above, sheds any light on the parties' intent."
> [*Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006) at Paragraph 20] (my bold emphasis)
>
> **At the bottom of page 29**, Judge Horn states:
>
> "The Kershaw court also stated that, '[w]hile the use of the term 'right of way' in the granting clause is not solely determinative of the estate conveyed, it remains highly relevant, especially given the fact that it is used to define the purpose of the grant.' Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Ass'n, 126 P.3d at 25 (emphasis in original)."
> [*Beres v. United States* (2011), Page 29]
>
> [Note: You won't find that referenced quote at paragraph 25 in the version of *Kershaw* that I link here. That discussion is at paragraph 27 (on pdf page 11) in my version of *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association*. I don't believe there is any difference in the content. I downloaded *Kershaw* from the internet.]

The above citation is important because, in *Kershaw*, our Washington State Supreme Court states that the term "right of way" in the granting clause defines the purpose of the grant. That conclusion follows an analysis based on the seven factors enumerated in *Brown* which were used to determine if the parties intended to adapt the statutory warranty form to grant easements. In the paragraph following the *seven factors enumerated in Brown,* *Brown* provides examples of how the term "right of way" defines the purpose of the deed to grant an easement. I cite that paragraph here, with *Brown's* citations converted to hyperlinks which will open the citation at its position in the full opinion. Citations are best read in the context of their opinion.

> "We have given special significance to the words 'right of way' in railroad deeds. In Roeder, for example, one of the deeds provided, in part, the grantor: 'conveys and warrants unto Bellingham and Northern Railway Company . . . for all railroad and other right of way purposes, certain tracts and parcels of land. . . .' Roeder,105 Wn.2d at 569. Recognizing a railroad can hold rights of way in fee simple or as easements, we held **the deed granted an easement based on the specifically declared purpose that the grant was a right of way for railroad purposes**, and there was no persuasive evidence of intent to the contrary. /6 Roeder,105 Wn.2d at 574. We reached the same result in Morsbach v. Thurston County, 152 Wash. 562, 564, 278 P. 686 (1929)(deed granted 'the right-of-way for the construction of said company's railroad in and over . . .'); Swan, 37 Wn.2d at 534 (granted property 'for the purpose of a Railroad right-of-way . . .'); Veach, 92 Wn.2d at 572 (**granted '[a] right-of-way one hundred feet wide** . . .'). See also Reichenbach v. Washington Short Line Ry. Co., 10 Wash. 357, 358, 38 P. 1126 (1894) ('so long as the same shall be used for the operation of a railroad' construed as granting easement); Pacific Iron Works v. Bryant Lumber & Shingle Mill Co., 60 Wash. 502, 505, 111 P. 578 (1910) (deed providing 'to have and to hold the said premises . . . for railway purposes, but if it should cease to be used for a railway the said premises shall revert to said grantors' grants easement not determinable fee); King County v. Squire Inv. Co., 59 Wn. App. 888, 890, 801 P.2d 1022 (1990) (**'grant and convey . . . a right-of-way**. . . . To Have and to Hold . . . so long as said land is used as a right-of-way . . .' grants easement), review denied, 116 Wn.2d 1021 (1991).
>
> These cases are consistent with the majority of cases that hold the use of the term 'right of way' as a limitation or to specify the purpose of the grant generally creates only an easement. See *Harris*, 120 Wn.2d at 738; Machado v. Southern Pac. Transp. Co., 233 Cal. App. 3d 347, 284 Cal. Rptr. 560 (1991). Conversely, where there is no language in the deed relating to the purpose of the grant or limiting the estate conveyed, and it conveys a definite strip of land, the deed will be construed to convey fee simple title. Swan, 37 Wn.2d at 536; 65 Am. Jur. 2d

> Railroads § 76 (1972); see, e.g., Urbaitis v. Commonwealth Edison, 143 Ill. 2d 458, 575 N.E.2d 548, 552 (1991)."
> [*Brown v. State of Washington* (1996)] (The Bold emphasis is mine. I've converted the above cited opinions to hyperlinks. If the hyperlink is clicked, the full opinion will be opened at the citation's position.)

In the above *Brown* citation, the *Squire* example refers to a SLS&E deed based on the ELS SLS&E form deed and contains granting words identical to those used in the Hilchkanum right-of-way deed and the other ELS SLS&E deeds construed in *Beres.* They are identical because the SLS&E Railway lawyers prepared a form deed which was taken for signature to the landowners along the surveyed path for the tracks. That is how right-of-way deeds were commonly obtained in those days. Compare these deeds to understand that, based on *Brown* and the earlier precedential opinions, the Hilchkanum deed should have been "presumed" to grant an easement. The fact that Judges Cox and Schindler in *Ray* refused to apply this precedent, and the judges of our Washington State Supreme Court refused to correct *Ray* on appeal, can only be seen as an intentionally dishonest act by these judges.

Read a study explaining the ELS SLS&E form deed and identifying the author.

On page 31, Judge Horn summarizes the section of her opinion which explains the Washington State common law used to construe railroad right-of-way deeds. I copy a section here that I see as particularly relevant to this discussion.

> "The majority of railroad right of way cases decided by the State of Washington Supreme Court, however, have indicated that the phrase 'right of way' in railroad grants is indicative of conveying an easement and not a fee simple interest. See, e.g., Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Ass'n, 126 P.3d at 24-25 ('Our **previous cases, which Brown does not overrule, and in fact incorporates,** establishes that whether by quitclaim or warranty deed, language establishing that **a conveyance is for right of way or [sic] railroad purposes presumptively conveys an easement** and thus provides the 'additional language' which 'expressly limits or qualifies the interest conveyed'...)"
> [*Beres v. United States* (2011), Page 31] (The Bold emphasis is mine.)
>
> [The above inside *Kershaw* citation is at paragraph 27 (on pdf page 11) in my version of *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association*.]

As I explained above on page 9 and 10 of this document, after participating in the East Lake Sammamish federal tax fraud scheme, King County claimed that *Brown* overruled all the previous railroad opinions which had always found that the grant of a

right-of-way in the granting clause was construed to be an easement. Instead, King County claimed that *Brown* changed that rule so that the grant of a right-of way to a railroad conveyed fee simple title. King County claimed *Brown* decided that an easement was conveyed only if a separate statement was included which limited the deed to right-of-way use, or stated the deed was for the purpose of a right-of-way. In *Rasmussen* and *Ray*, Ninth Circuit Judges Rothstein and Fletcher, and Washington Division One Appeals Judges Cox and Schindler adopted this King County claim. The judges of our Washington State Supreme Court refused to accept appeal of *Ray*, therefore they also adopted King County's dishonest claim that *Brown* had changed the old rule and established a new "bright line rule" to construe railroad deeds. Then ten years after *Brown*, in *Kershaw* our WA Supreme Court stated that **"...our previous cases, which Brown does not overrule, and in fact incorporates, establish that whether by quitclaim or warranty deed, language establishing that a conveyance is for right of way or railroad purposes presumptively conveys an easement..."**. (*Kershaw* at Paragraph 27) This *Kershaw* citation is partially quoted in the *Beres* citation above, and shown in full context in the *Kershaw* citation on the next page, below.

In *Kershaw*, our Washington State Supreme Court "admits" its dishonesty in denying the *Ray v. King County* (2004) appeal.

So, when *Kershaw* came along in 2006, our Washington State Supreme Court judges confirmed the long held legal precedent that a deed grants an easement when it conveys a "right of way" to a railroad in its granting clause. Further, in *Kershaw* our WA Supreme Court explains that its 1996 *Brown* opinion **"...does not overrule, and in fact incorporates..."** the previous cases which establish that "right of way" in the granting clause conveys an easement. So, since our Washington State Supreme Court understood "right of way" in the granting clause conveyed an easement in *Brown* 1996 and in *Kershaw* 2006, then why didn't the same rule apply when our Washington State Supreme Court reviewed *Ray v. King County* in 2004? Does the rule only apply in years that end with the number "6"? Is there some other unusual issue with the 1887 Hilchkanum right-of-way deed which would overcome the legal understanding of "right of way" in the granting clause? No, there is not! The judges of our Washington State Supreme Court intentionally allowed the dishonest *Ray* opinion to stand in violation of the common law precedent, and in violation of their responsibility to uphold the law. They admit their violation in *Kershaw*, as explained above.

Our Washington State Supreme Court hid its dishonesty in a *Kershaw* footnote:

In *Beres* (2011), Judge Horn decided that *Kershaw* provided justification for her to find the Hilchkanum deed granted an easement. She did this in spite of the fact that

Ray found the Hilchkanum deed to grant fee simple title, and our Washington State Supreme Court advised Judge Horn that *Ray v. King County* (2004) and *Brown v. State of Washington* (1996) provided "clear" guidance. So, I wondered if our Supreme Court of Washington State addressed ***Ray*** in *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006). I did a search. ***Ray* is discussed only in *Kershaw* Footnote 11.** Crooked lawyers and judges like to hide their most dishonest statements in footnotes. Few will ever read their opinions, and even fewer will read the footnotes, so lies get hidden there. Fewer yet will verify the truth of statements made in a footnote, but I will verify the dishonesty in Footnote 11. *Kershaw* Footnote 11 originates in Paragraph 27.

Here is **Paragraph 27 from *Kershaw***. Notice the emphasis on the term "right of way".

> "27 In sum, Brown establishes that use of a statutory warranty deed creates a presumption that fee simple title is conveyed. However, our previous cases, which Brown does not overrule, and in fact incorporates, establish that whether by quitclaim or warranty deed, language establishing that a conveyance is for right of way or railroad purposes presumptively conveys an easement and thus provides the 'additional language' which 'expressly limits or qualifies the interest conveyed.'Brown, 130 Wash.2d at 437, 924 P.2d 908. In examining the language of the deed, while there is some conflicting language, there is insufficient evidence to overcome the presumption that an easement was created.**[11]** In fact, the language, specifically granting the railroad the 'right to construct, maintain and operate a railway or railways over and across the same' strongly supports the presumption in favor of an easement. CP at 654. This conclusion is consistent with Mosbach, Swan, Veach, and Roeder and at the same time maintains Brown's instruction that reviewing courts perform a thorough examination of railroad deeds based on Brown's enumerated factors.[12] While the use of the term 'right of way' in the granting clause is not solely determinative of the estate conveyed, it remains highly relevant, especially given the fact that it is used to define the purpose of the grant. Weighing the other language in the deed, we find the language of the 1905 deed suggests the parties' intent to convey only an easement interest to the railroad. We thus affirm the Court of Appeals decision that Yakima Interurban possesses an easement interest in the right of way." [*Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006) at Paragraph 27] (My Bold Emphasis)
>
> [Note: In *Beres* (2011), Judge Horn cites the above citation as "Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Ass'n, 126 P.3d at 25". I can't explain why it is paragraph 27 in the version I downloaded from the Internet and cite above.]

Here is **Footnote 11 from the *Kershaw* citation above**. There is a **significant lie** here by the judges of our Washington State Supreme Court.

> "[11] Level 3 asserts a recent Division One case, *Ray v. King County*, 120 Wash.App. 564, 86 P.3d 183, review denied, 152 Wash.2d 1027, 101 P.3d 421 (2004), which applied the *Brown* factors to a railroad deed and found a fee simple conveyance, is analogous here and we should apply the same analysis. However, **while the Ray deed did include the phrase 'right of way' it did so only to the extent that it stated it was conveying a 'right of way strip.'** Id. at 572, 86 P.3d 183. The *Ray* court thus found no presumption in favor of an easement and applied the *Brown* factors to reach its conclusion that a fee interest was transferred. Here, the deed specifically established the purpose of the grant when it stated the land was 'to be used by [the Railway] as a right of way for a railway.' CP at 654. This creates a presumption in favor of an easement which was not present in *Ray*." [*Kershaw* at Footnote 11] (My Bold Emphasis)

In this *Kershaw* Footnote 11, the judges of our Washington State Supreme Court **lie!** It can only be seen as an intentional lie. Our Supreme Court judges were presented three opportunities to try, correct, or explain *Ray v. King County* (2004). So, the Supreme Court judges who participated in the denial of the *Ray* appeal should have been familiar with all the subtleties of that dishonest opinion when they published Footnote 11 in *Kershaw*. They knew their Footnote 11 statement, that the Hilchkanum right-of-way deed conveyed a "right of way strip", was a lie. The 1887 Hilchkanum right-of-way deed conveyed a "right of way" in its granting clause, not a "right of way strip". The term "right of way strip" does not appear in granting language of the Hilchkanum deed. The term "right of way strip" appears only in the portion of the Hilchkanum deed which contains the legal description. More on this further below, but first I discuss "why".

Why would these dishonest Supreme Court judges state in Footnote 11 of *Kershaw* that the Hilchkanum deed granted a "right of way strip"? I believe they did this because they knew they committed a criminal act against hundreds of ELS landowners when they refused to correct *Ray v. King County* (2004) on appeal. Since the critical discussion in *Kershaw* is the importance and effect of the term "right of way" in the Kershaw granting clause, our dishonest Washington State Supreme Court judges stated the Hilchkanum right-of-deed conveyed a "right of way strip" in order hide the fact that both deeds use the term "right of way" in their granting clauses, but are construed to have two different meanings by our Washington State Supreme Court judges. A *Kershaw* reader, who is unfamiliar with *Ray* and also unfamiliar with the precedential understanding of the term "right of way" in a railroad deed, would likely assume that the

addition of the word “strip” to the term "right of way" in a railroad granting clause would cause a completely different meaning than the term "right of way". I believe our dishonest Washington State Supreme Court judges added the word “strip” for exactly that reason. In denying the *Ray* appeal, the judges of our Washington State Supreme Court committed a criminal act against hundreds of Washington State citizens who owned ELS land. Our WA Supreme Court judges needed to hide an honest comparison of the deeds construed in *Kershaw* and *Ray* in order to hide the crime they committed in denying the *Ray* appeal. Why did they do this? It doesn’t matter “why”! They refused to correct the dishonest *Ray* opinion, and that is a criminal act by our Washington State Supreme Court judges, whatever their reason.

Why haven’t you learned about this criminal act by our Supreme Court judges before now? The most credible folks to explain are lawyers and judges. But, if a lawyer stated the facts I state here, and expressed his/her opinion that the judges of our Washington State Supreme Court have committed the crimes which I describe here, he/she would be disbarred or so punished by judges that their legal careers would be ruined. I believe that a judge who did this would be censored or removed from the bench for a violation of the WA Code of Judicial Conduct. Our judges have lost their commitment to the law. The appearance of justice in our courts has become more important than justice itself. So, judges protect each other at the expense of the public.

Understanding the effect of the term “right of way” in a railroad granting clause:

Going back to the meaning of “right of way” in a railroad deed, the term “right of way strip”, used in the Hilchkanum deed legal description, is not language used by the court to determine if the deed grants an easement. The term “right of way” in the Hilchkanum granting clause is where the court turns to determine the issue of easement or fee. Where and how the term “right of way” is used in a railroad deed determines its meaning and controls whether the deed grants an easement or fee simple title. Read this citation from *Brown* to understand.

> “The words 'right of way' can have two purposes: (1) to qualify or limit the interest granted in a deed to the right to pass over a tract of land (an easement), or (2) to describe the strip of land being conveyed to a railroad for the purpose of constructing a railway. Morsbach, 152 Wash. At 568; Harris 120 Wn.2d at 737. Unlike Swan, Veach, and Roeder, where 'right of way' was used in the granting or habendum clauses to qualify or limit the interest granted...”
> [*Brown v. State* (1996)]

My accusations of dishonesty and statements of criminal behavior in this document must be understood as my opinion. I have been denied the right to legally establish these crimes as fact.

Here is a portion of the 1887 Hilchkanum right-of-way deed to the SLS&E which applies to the above citation from *Brown*:

> "In consideration of the benefits and advantages to accrue to us from the location construction and operation of the Seattle Lake Shore and Eastern Railway in the County of King in Washington Territory we do hereby donate grant and convey unto said Seattle Lake Shore and Eastern Railway Company a **right of way** one hundred (100) feet in width through our lands in said County described as follows to wit
>
> Lots one (1) two (2) and three (3) in section six (6) township 24 North of Range six (6) East.
>
> Such **right of way strip** to be fifty (50) feet in width on each side of the center line of the railway track as located across our said lands by the Engineer of said railway Company which location is described as follows to wit.
>
> Commencing at a point 410 feet West from North East……."
> [1887 Hilchkanum right-of-way deed to the SLS&E] (my bold emphasis)

The first paragraph of the above Hilchkanum deed contains the granting clause. The granting clause conveys a "**right of way**". This has always been construed to convey an easement in Washington State, except for *Rasmussen* and *Ray.* King County accepted a phony donation of right-of-way land from BNSF and, in *Rasmussen* and *Ray,* the Hilchkanum deed became the first deed construed in Washington State where the term "right of way" in the granting clause was changed to "strip of land" by the judges and then found to grant fee simple title.

Above, the term "**right of way strip**" appears in the portion of the Hilchkanum deed which provides the legal description. In this portion of the deed it is used to describe, not to convey or grant. It does not indicate the intentions of the parties to convey an easement or a fee estate. It is merely language used to describe the metes and bounds of what is granted. As I wrote above, where and how the term "right-of-way" is used in a deed determines its meaning. When "right-of-way" is used to designate what is granted, or explains the purpose of the deed, or is used to limit the grant, it is construed to convey an easement. The best way to understand this is to read the Washington State opinions which establish this precedent. Here is a link that provides a list from the early days through *Brown*. The precedent established in these opinions was intentionally ignored in the *Ray* and *Rasmussen* opinions, but was correctly applied in *Kershaw*.

My accusations of dishonesty and criminal behavior here must be understood to be my opinion.

Precedential opinions explaining the term “right-of-way”, through *Brown*.

Kershaw cites *Swan*, *Morsbach*, *Veach*, and *Roeder*, and *Brown* for authority in determining the meaning of the term “right of way” in a railroad granting clause. To aid in understanding this important precedent, I provide twenty significant hyperlinked citations from those five opinions. Click on the citation\link to open the citation at its position in its full opinion. This allows the reader to read the citation in context. The precedent which is established and reaffirmed with these citations was carefully briefed to the *Rasmussen* and *Ray* judges.

The blue text below is hypertext. The underline is removed for readability. Click on the hypertext to open the link at its position in the full opinion. The **bold emphasis** is mine.

Brown v. State of Washington **(1996)**

"...we held the deed granted an **easement** based on the specifically declared purpose that the grant was a **right of way** for railroad purposes..."

"...the term '**right of way**' as a limitation or to specify the purpose of the grant generally creates only an **easement**."

"**The words "right of way" can have two purposes:** (1) to qualify or limit the interest granted in a deed to the right to pass over a tract of land (an easement), or (2) to describe the strip of land being conveyed to a railroad for the purpose of constructing a railway. Morsbach, 152 Wash. at 568; Harris 120 Wn.2d at 737. Unlike **Swan, Veach, and Roeder, where "right of way" was used in the granting or habendum clauses to qualify or limit the interest granted,** "right of way" in the deeds at issue here appears in either the legal description of the property conveyed or in the portion of the deeds describing Milwaukee's obligations with respect to the property."

Dissenting Opinion: "...where the granting clause...declares the purpose...to be a **right of way** for a railroad, the deed passes an **easement** only..."

Dissenting Opinion: "...an **easement** is not created unless the magic words '**right of way**' are contained in the 'granting clause.'"

Dissenting Opinion: "...Morsbach does not narrowly define 'granting clause' nor does it require the **right of way** purpose be expressed in any particular words."

Dissenting Opinion: "Where the purpose is **right of way**...it was the intent of the parties to grant...an **easement**."

Dissenting Opinion: "...majority...giving 'special significance to the words '**right of way**' in railroad deeds,'...finding the absence...overpowering in significance."

Dissenting Opinion: "A grant of a **right of way** to a railroad company is the grant of an **easement** merely..."

Roeder v. BNSF **(1986)**

"Since the granting clause...declares the purpose of the grant to be a **right of way** for a railroad, the deed passes an **easement**..."

"...land being conveyed as "a **right-of-way**"...has been found to create an **easement**..."

Veach v. Culp **(1979)**

"The parties in fact describe **what was being conveyed: a right-of-way 100 feet wide**, being 50 feet on each side of the center line of the railroad. **Language like this has been found to create an easement**, not a fee simple estate."

"Given the **language of the deed explicitly describing the conveyance of a right-of-way** and given the rule of Swan v. O'Leary, supra, and Morsbach v. Thurston County, supra, we conclude **the deed conveyed an easement**, not a fee title."

Swan v. O'Leary **(1950)**

"...when the granting clause of a deed declares the purpose of the grant to be a **right of way** for a railroad the deed passes an **easement** only..."

Morsbach v. Thurston Co. (1929)

"It is followed by a case note in 6 Ann. Cas., p. 239, supra, among others, citing many cases to the effect that, **where a railroad has taken a conveyance expressly granting a right of way, it will be held to have taken an easement merely**, and that a grant of a strip of land to a railroad company 'for right of way and for operating its railroad only,' conveyed merely an easement."

"...**The granting clause of this instrument conveys only a right of way, which is a mere easement**, the owner of the soil retaining his exclusive right in all mines, timber and earth for every purpose not incompatible with the use for which it is granted;..."

"The agreement in this case does not grant land in its granting clause, but only right of way . . . Where the granting clause declares the purpose of the grant to be a right of way for a railroad, the deed passes an easement only, though it be in the usual form of warranty deed."

"In Cincinnati, H. & D. R. Co. v. Wachter, 70 Ohio 113, 70 N. E. 974, **the grant involved was of a right of way, one hundred feet in width, across a tract of land** containing twenty acres or more, together with a waiver of all further damages that might arise by reason of the location or construction of the railroad or repairing thereof when finally established or completed. There was no reservation of any kind in the instrument. The right of way was adopted, the road completed in 1854, and used continuously for the operation of railroad passenger and freight trains. **The court there said:**

> **'The right of way of the company is an easement.** Washb. on E. & S. 4. It is, using exact language, a servitude imposed as a burden on the land. **The conveyance from Crane in terms specifies that it is a 'release of a right of way,'** and no question is made, and we presume none can be, that the right thus granted is not different from, nor greater than, that which would result from an appropriation proceeding under the statute.'

It was held in that case that an easement, and not a fee simple estate, was granted."

> "A noted text writer states the law as follows:
>
> '**A grant of a right of way to a railroad company is the grant of an easement merely, and the fee remains in the grantor.** The mere fact that the railroad company's charter empowered it to acquire a greater estate than that which it contracted for has been held not to affect its rights in the land purchased. But statutes authorizing railroad companies to acquire the fee in land have been generally given effect. It is held that a deed conveying land to a railroad for a right of way gives the railroad no more rights than it would have acquired by condemnation. 'The easement is not that spoken of in the old law books, but is peculiar to the use of a railroad which is usually a permanent improvement, a perpetual highway of travel and commerce, and will rarely be abandoned by nonuser. The exclusive use of the surface is acquired, and damages are assessed, on the theory that the easement will be perpetual; so that, ordinarily, the fee is of little or no value unless the land is underlaid by quarry or mine.' **Where the intention to convey a fee does not appear, as in case of the conveyance of a 'right of way' for the railroad through certain lands, the company takes an easement only. The fact that the right conveyed is designated as a fee, or that the deed contains covenants of warranty, does not necessarily pass the fee.**
> 1 Thompson on Real Property, SS 4:20.'"

The understanding of the term "right of way" in a railroad deed was intentionally misrepresented in the *Ray* and *Rasmussen* opinions. If one goes to *Ray* and reads the section that our Washington State Supreme Court is citing in *Kershaw* Footnote 11, they will understand the complete dishonesty of the *Kershaw* judges. In *Ray*, Judge Cox published this absolute lie:

> "The granting provisions of the Hilchkanums' deed characterize the conveyed property first as a '**right of way** one hundred (100) feet in width through' {the Hilchkanums'} lands,' and the property conveyed as a '**right of way strip**.'31 The substance of this language is that the subject of the conveyance is a **strip of land**, not just the grant of some interest 'over' the land, as the Rays state. Language conveying a strip of land suggests a fee, not a mere easement." [*Ray v. King County (2004)*] (my emphasis)
>
> [The hyperlink directly above, [*Ray v. King County (2004)*], opens a version of *Ray v. King County* (2004) which provides extensive notes to help the reader understand the absolute dishonesty of that opinion. The hyperlink opens at the

position Judge Cox publishes the lie I discuss here. The truth and the law are my friend, and an enemy of the crooked judges who covered-up the ELS federal tax fraud scheme. This includes the judges of our WA Supreme Court.]

In the above citation, Judge Cox changes the term “right of way” to “right of way strip” then to “strip of land”. In every Washington State opinion I’ve read, except for *Ray*, a deed granting a “right of way” to a railroad has been found to convey an easement. In *Brown*, the deeds to the Milwaukee railroad granted only a “strip of land” and therefore were found to convey fee simple title. The terms “right of way” and “strip of land” are opposites in a railroad granting clause, when construing the easement-or-fee issue. “Right of way” construes to easement. “Strip of land” construes to fee simple title. Yet in the *Ray* citation above, Judge Cox changed “right of way” to “right of way strip” then to “strip of land” and declared a “fee” was granted. This obscenity was allowed by the judges of our Washington State Supreme Court when *Ray* was appealed in 2004. In denying appeal, our Washington State Supreme Court therefore signaled it agreed with the dishonest maneuvers and lies in *Ray*. But, when Level 3 cited *Ray* as precedent in its *Kershaw* brief, our Supreme Court refused to adopt the *Ray* findings in its *Kershaw* opinion. So, our Supreme Court allowed Judge Cox to change the Hilchkanum granting words in *Ray* when it denied appeal in 2004, but refused to do the same for Level 3 in *Kershaw* two years later. Shouldn’t there be consistency in the law? This leaves *Ray* as the only opinion in Washington State common law where a “right of way” is conveyed in a railroad granting clause and the court found a fee simple conveyance. *King County v. Rasmussen* does the same, but is a Ninth Circuit opinion.

Let’s look at the lies which have been published by judges to hide the ELS tax fraud scheme. The Hilchkanum right-of-way deed grants a “right of way”, not a "right of way strip" as the judges of our Supreme Court misstate in *Kershaw* Footnote 11, and not a “strip of land” as misstated in *Ray*. To prove my point, below I provide the Hilchkanum granting clause and a link to the full deed. Then, I provide a link to the discussion in each opinion where the judges claimed the Hilchkanum right-of-way deed granted something other than a “right of way”.

The granting clause from the premises of the 1887 Hilchkanum right-of-way deed:

> "In consideration of the benefits and advantages to accrue to us from the location construction and operation of the Seattle Lake Shore and Eastern Railway in the County of King in Washington Territory we do hereby donate grant and convey unto said Seattle Lake Shore and Eastern Railway Company a **right of way** one hundred (100) feet in width through our lands in said County described as follows to wit."

[1887 Hilchkanum right-of-way deed] (my emphasis above)

The blue text below is **hypertext**. The underline is removed for readability.

Federal Judge Barbara Rothstein changed the granting words of the Hilchkanum deed to "'**strip**' **of land**" in *King County v. Rasmussen* (2001).

Federal Judge Betty Fletcher changed the granting words of the Hilchkanum deed to "'**strip**' **of land**" in *King County v. Rasmussen* (2002).

Washington State Appeals Judge Ronald Cox changed the granting words of the Hilchkanum deed to "**strip of land**" in *Ray v. King County* (2004).

The Washington State Supreme Court stated that the Hilchkanum right-of-way deed granted a "**right of way strip**" in Footnote 11 of *Kershaw* (2006).

Judge Horn exposes our Supreme Court's dishonesty

It is not surprising that the United States (as defendant) referenced *Kershaw* Footnote 11 in briefs for *Beres v. United States* (2011). It provided an argument that our Washington State Supreme Court agreed with the finding in *Ray* that "right of way" in the Hilchkanum granting clause meant "right of way strip" which meant "strip of land". Judge Horn addressed this situation on page 43 *of Beres v. United States* (2011). (cited directly below) Judge Horn is much kinder to our Supreme Court than I am. She implies our Washington State Supreme Court judges merely made a small error. Then Judge Horn finds the dishonest Footnote 11 merely "not persuasive".

> "Of note, the court in Kershaw stated that, 'while the Ray deed did include the phrase 'right of way' it did so only to the extent that it stated it was conveying a 'right of way strip.'' Id. Although the third paragraph of the Hilchkanum source deed described the 'right of way strip to be fifty (50) feet in width on each side of the center line of the railway track,' **the Kershaw footnote did not address the right of way reference in the granting clause of the Hilchkanum deed. In the Hilchkanum granting clause, the deed referred to the phrase 'right of way,' without mention of a limitation by use of the word 'strip,'** as follows, 'a right of way one hundred (100) feet in width through our lands in said County described as follows….' Furthermore, the use of the phrase 'right of way' in the granting clause in the Hilchkanum source deed, and in the SLS&E Deeds generally, established the purpose of the right of way: for the 'location, construction and operation of the Seattle, Lake Shore and Eastern Railway….' As the Kershaw court did not consider both references to the phrase 'right of way' in the Hilchkanum source deed when drawing a distinction between the Hilchkanum

> source deed and the deed under review in Kershaw, or that the right of way defined the purpose of the Hilchkanum conveyance to the SLS&E, **the footnote in Kershaw is not persuasive**."
> [*Beres v. United States* (2011), Page 43] (my bold emphasis)

I cannot emphasize enough the dishonesty which is exposed by the above *Beres* citation and by the earlier discussion of this issue starting on page 14 of this document! Directly above, Judge Horn points out that our Supreme Court judges "did not address the right of way reference in the granting clause of the Hilchkanum deed". (my emphasis) She then explains the importance of "right of way" in the granting clause. She concludes that *Kershaw* Footnote 11 is "not persuasive" because "... the Kershaw court did not consider both references to the phrase 'right of way' in the Hilchkanum source deed...or that the right of way defined the purpose of the Hilchkanum conveyance...".

Throughout this analysis, I complain about Judge Horn making excuses for criminal acts from the bench by the *Ray* and *Rasmussen* judges. Above, Judge Horn points out the judges of our Supreme Court "did not address" the use of "right of way" in the Hilchkanum granting clause. Starting on *Beres* (2011) page 41, Judge Horn discusses the effect of the word "strip" in the granting language and property description of a railroad deed. Based on her discussion, it seems wrong to me that Judge Horn minimized the fact that our Supreme Court misstated the words of the Hilchkanum granting language in Footnote 11 of *Kershaw* by noting that our Supreme Court "did not address" instead of "failed to address" the correct granting words. A minor complaint? No, a complaint demonstrating Judge Horn's willingness to protect the dishonesty of the judges who participated in *Ray* and *Rasmussen*.

Continuing the analysis by Judge Horn in *Beres* (2011):

On page 34, Judge Horn decided to construe all six SLS&E deeds together because they are "essentially the same".

On page 35, Judge Horn concludes that the SLS&E deeds are not in statutory warranty form, so therefore there is not a presumption that the deed grants fee simple title.

On page 38, after a thorough investigation of how the term "right of way" is used and understood in railroad deeds, Judge Horn concludes that the use of the term "right of way" in the granting clause of the SLS&E deeds creates a presumption the deeds grant easements. She sums with this citation:

> "After review of the SLS&E Deeds and the precedent in the State of Washington Supreme Court, the court concludes that **a presumption in favor of an easement is created by the language of the SLS&E Deed**s. Therefore, in accordance with the guidance in Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Association, 126 P.3d 16, and Swan v. O'Leary, 225 P.2d 199, the court reviews SLS&E Deeds utilizing the presumption in favor of an easement. Because the presumption in favor of an easement is **rebuttable**, the court must further examine the intent of the source deeds by, "performing a deed-by-deed inquiry into the interests conveyed based on **(1) the particular language of the deed, (2) the form of the deed, and (3) the surrounding circumstances and subsequent conduct of the parties."** Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Ass'n, 126 P.3d at 22; see also Brown v. State, 924 P.2d at 911. Under Washington law, the intentions of the parties are "paramount." See Brown v. State, 924 P.2d at 911."
> [*Beres v. United States* (2011), Page 38] (with my bold emphasis)
>
> [The above *Kershaw* inside citation is at paragraph 17 (on pdf page 7) in my version of *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006).]

On page 41, Judge Horn states the best guidance from our Supreme Court to construe railroad deeds is to consider the seven factors listed in *Brown* and *Swan*, then add two unnumbered factors: the surrounding circumstances and subsequent conduct of the parties.

From page 41 through 47, Judge Horn analyzes the effect of the seven factors listed in *Brown* and *Swan* to judge whether each factor supports or rebuts the initial presumption that the deeds grant easements, giving weight to each factor.

On page 47, Judge Horn begins her analysis of the surrounding circumstances and subsequent conduct of the parties. She notes that she has more documentation than was available in *King County v. Rasmussen* or *Ray v. King County*. This is certainly true because she has documents associated with five other SLS&E deeds, while *Rasmussen* and *Ray* dealt only with the Hilchkanum deed. The extra documents are described starting on page 4 *of Beres v. United States* (2011). I discussed this situation on page 8 of this document. Judge Horn claims she has new material. I doubt she does in any significant way. She undoubtedly has more pieces of paper, but sufficient documents were provided in *Rasmussen* (my lawsuit) to cause the *Rasmussen* judges to come to the same conclusions that Judge Horn makes in this opinion. I doubt that Judge Horn has any document which provides significant facts that are different than what we briefed in *Rasmussen,* and I believe was briefed in *Ray*.

From page 47 into 52, Judge Horn examines the "subsequent conduct of the parties". She evaluates subsequent real estate deeds and timber contracts involving the grantors of the original right-of-way deeds to determine if these contracts indicated the grantor's belief that they had conveyed easements to the SLS&E in 1887. In a number of cases, Judge Horn finds evidence the right-of-way grantors believed they granted easements to the SLS&E. In other cases she finds no intention to grant easement or fee simple title. There are no cases that Judge Horn finds evidence the grantors believed they conveyed fee simple title of the right-of-way land. This establishes a "factor" favoring easement over fee simple to be added to the seven *Brown/Swan* factors discussed above.

Starting on page 52 into 53, Judge Horn examines "the surrounding circumstances" associated with the 1887 right-of-way deeds to the SLS&E. The use of the statutory warranty form presumes conveyance of fee simple title. Judge Horn notes the argument that the fact the statutory warranty form was not used suggests that there was no intention by the parties to convey fee simple title. The statutory warranty form deed was established by Washington Territorial law in 1886 The SLS&E deeds were executed a year later in 1887 and were not in statutory warranty form. She notes the argument that Thomas Burke was the railway's lawyer and was competent with respect to property law. Hence, Burke would have used the statutory warranty form if he intended conveyance of fee simple title. Further she notes that a pre-printed form was offered as evidence suggesting the Railway lawyers wrote the ELS SLS&E right-of-way deeds.

In common law the words of a deed are construed against its author. Ambiguity is construed against the party who prepared the deed. Usually, if there is no evidence of authorship, the words of a deed are construed against the grantor. In this case, the a SLS&E pre-printed form was provided as an exhibit. The words of the six SLS&E right-of-way deeds construed in this opinion are the same as the pre-printed SLS&E form. These facts favor construing the words of the SLS&E deeds against the Railway lawyers as author of the deeds.

On page 53, Judge Horn notes that the Hilchkanum, Tahalthkut, Sbedzuse, Davis, and Yonderpump SLS&E right-of-way deeds were signed with an "x" indicating their illiteracy. This also favors construing the words of the SLS&E deeds against the Railway lawyers as author of the deeds.

Page 53 and 54, Judge Horn discusses how the term "right of way" was understood at the time the deeds were written. The term "right of way" has had changes in meaning over time and how it was understood at the time of the execution of

the deeds is important since the intentions of the parties are the duty of the court to enforce. The argument was that "right of way" meant easement in those days, and Judge Horn provides an argument in favor of that meaning.

Page 54 and 55, Judge Horn discusses the argument that SLS&E deeds were granted by homesteaders prior to receiving their patent. Since the homestead law forbade the sell of their property prior to ownership (patent), the parties were able to only convey an easement under an 1873 federal law allowing un-patented homesteaders the right to convey rights-of-way to railroads. Judge Horn found this persuasive evidence the SLS&E deeds granted easements.

Page 55, Judge Horn discusses the defendant's (United States) claim that, based on the fact that the residents welcomed the Railway and the cost of construction was significant, that the deeds should be considered fee simple. She finds that argument not persuasive.

Page 56, Judge Horn explains that the defendants cite *King County v. Rasmussen* and *Ray v. King County* as an argument that the ELS deeds granted fee simple. Judge Horn explains that these opinions are not binding on her court.

Page 57 and 58, Judge Horn restates that Washington State law controls, and notes that *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006) is that latest applicable opinion from Washington's highest court. So, Horn concentrates on *Kershaw* and focuses on the word "presumption". She explains that one presumption existed in Brown, (that the use of the statutory warranty deed form presumed a fee simple conveyance). Then, she explains that two presumptions exist in *Kershaw*. They are the presumption that a fee simple title is conveyed because the statutory warranty deed form is used, and that the presumption that an easement is conveyed because a "right of way" is conveyed in the granting clause. She finds the presumption of an easement more compelling.

Page 58, Judge Horn states the following:

> "The *Ray v. King County* and *King County v. Rasmussen* cases were brought as quiet title actions, not as taking claims, as are the consolidated cases before this court." [*Beres v. United States*, Page 58]

This statement irritates me because the critical issue in *Rasmussen, Ra*y, and *Beres* is exactly the same. That common critical issue is whether Hilchkanum granted an easement or fee simple title with his 1887 right-of-way deed. Exactly the same exhibits and exactly the same legal arguments apply to determine that issue.

Determining easement-or-fee is the same in a quiet title lawsuit as it is in a taking claims lawsuit. Here, Judge Horn appears to hide the dishonesty in *Rasmussen* and *Ray* by suggesting her examination of the takings issue would somehow change the way the Hilchkanum deed would be construed.

Page 58 and 59, Judge Horn explains that the judges in *Rasumssen* and *Ray* could have not come to the same conclusion that she did because they didn't have the guidance in Kershaw that the grant of a "right of way" establishes the presumption that the deed grants an easement. I cite her conclusion here:

> "Although the courts in King County v. Rasmussen and Ray v. King County noted that the phrase "right of way" was contained in the Hilchkanum deed, without the guidance of the decision in Kershaw, the **presumption** in favor of an easement when the phrase "right of way" is used in the deed, Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Ass'n, 126 P.3d at 23, those **courts did not fully consider the importance of the phrase "right of way" in the Hilchkanum deed.** [*Beres v. United States*, Page 58] (with my bold emphasis)

Kershaw cited *Swan*, *Morsbach*, *Veach*, *Roeder*, and *Brown*, to determine the easement or fee issue. Referring to *Rasumssen* and *Ray,* Judge Horn states in the citation above that "...without the guidance of the decision in Kershaw...those courts did not fully consider the importance of the phrase "right of way" in the Hilchkanum deed." So below, again, are the citations from *Swan, Morsbach, Veach,* and *Roeder,* and *Brown* which Judge Horn claims provided insufficient guidance for the judges in *Rasumssen* and *Ray*. Decide for yourself if the judges in *Rasumssen* and *Ray* were given sufficient guidance from *Swan, Morsbach, Veach, Roeder, and Brown*. These opinions were briefed to the *Rasumssen* and *Ray judges.* For over one hundred years in Washington State\Territory, a railroad deed conveying a "right of way" in its granting clause has been construed to convey an easement. The only exceptions are the *Ray* and *Rasmussen* opinions.

The blue text below is hypertext. The underline is removed for readability. Click on the hypertext to open the link at its position in the full opinion. The **bold emphasis** is mine. These citations were previously presented on page 19 of this document.

***Brown v. State of Washington* (1996)**

> "...we held the deed granted an **easement** based on the specifically declared purpose that the grant was a **right of way** for railroad purposes..."

"...the term '**right of way**' as a limitation or to specify the purpose of the grant generally creates only an **easement**."

"**The words "right of way" can have two purposes:** (1) to qualify or limit the interest granted in a deed to the right to pass over a tract of land (an easement), or (2) to describe the strip of land being conveyed to a railroad for the purpose of constructing a railway. Morsbach, 152 Wash. at 568; Harris 120 Wn.2d at 737. Unlike **Swan, Veach, and Roeder, where "right of way" was used in the granting or habendum clauses to qualify or limit the interest granted,** "right of way" in the deeds at issue here appears in either the legal description of the property conveyed or in the portion of the deeds describing Milwaukee's obligations with respect to the property."

Dissenting Opinion: "...where the granting clause...declares the purpose...to be a **right of way** for a railroad, the deed passes an **easement** only..."

Dissenting Opinion: "...an **easement** is not created unless the magic words '**right of way**' are contained in the 'granting clause.'"

Dissenting Opinion: "...Morsbach does not narrowly define 'granting clause' nor does it require the **right of way** purpose be expressed in any particular words."

Dissenting Opinion: "Where the purpose is **right of way**...it was the intent of the parties to grant...an **easement**."

Dissenting Opinion: "...majority...giving 'special significance to the words '**right of way**' in railroad deeds,'...finding the absence...overpowering in significance."

Dissenting Opinion: "A grant of a **right of way** to a railroad company is the grant of an **easement** merely..."

Roeder v. BNSF **(1986)**

"Since the granting clause...declares the purpose of the grant to be a **right of way** for a railroad, the deed passes an **easement**..."

"...land being conveyed as "a **right-of-way**"...has been found to create an **easement**..."

Veach v. Culp (1979)

"The parties in fact describe **what was being conveyed: a right-of-way 100 feet wide**, being 50 feet on each side of the center line of the railroad. **Language like this has been found to create an easement**, not a fee simple estate."

"Given the **language of the deed explicitly describing the conveyance of a right-of-way** and given the rule of Swan v. O'Leary, supra, and Morsbach v. Thurston County, supra, we conclude **the deed conveyed an easement**, not a fee title."

Swan v. O'Leary (1950)

"...when the granting clause of a deed declares the purpose of the grant to be a **right of way** for a railroad the deed passes an **easement** only..."

Morsbach v. Thurston Co. (1929)

"It is followed by a case note in 6 Ann. Cas., p. 239, supra, among others, citing many cases to the effect that, **where a railroad has taken a conveyance expressly granting a right of way, it will be held to have taken an easement merely**, and that a grant of a strip of land to a railroad company 'for right of way and for operating its railroad only,' conveyed merely an easement."

"...**The granting clause of this instrument conveys only a right of way, which is a mere easement**, the owner of the soil retaining his exclusive right in all mines, timber and earth for every purpose not incompatible with the use for which it is granted;..."

My accusations of dishonesty and statements of criminal behavior in this document must be understood as my opinion. I have been denied the right to legally establish these crimes as fact.

"The agreement in this case does not grant land in its granting clause, but only right of way . . . Where the granting clause declares the purpose of the grant to be a right of way for a railroad, the deed passes an easement only, though it be in the usual form of warranty deed."

"In Cincinnati, H. & D. R. Co. v. Wachter, 70 Ohio 113, 70 N. E. 974, **the grant involved was of a right of way, one hundred feet in width, across a tract of land** containing twenty acres or more, together with a waiver of all further damages that might arise by reason of the location or construction of the railroad or repairing thereof when finally established or completed. There was no reservation of any kind in the instrument. The right of way was adopted, the road completed in 1854, and used continuously for the operation of railroad passenger and freight trains. **The court there said:**

> **'The right of way of the company is an easement.** Washb. on E. & S. 4. It is, using exact language, a servitude imposed as a burden on the land. **The conveyance from Crane in terms specifies that it is a 'release of a right of way,'** and no question is made, and we presume none can be, that the right thus granted is not different from, nor greater than, that which would result from an appropriation proceeding under the statute.'

It was held in that case that an easement, and not a fee simple estate, was granted."

"A noted text writer states the law as follows:

'**A grant of a right of way to a railroad company is the grant of an easement merely, and the fee remains in the grantor.** The mere fact that the railroad company's charter empowered it to acquire a greater estate than that which it contracted for has been held not to affect its rights in the land purchased. But statutes authorizing railroad companies to acquire the fee in land have been generally given effect. It is held that a deed conveying land to a railroad for a right of way gives the railroad no more rights than it would have acquired by condemnation. 'The easement is not that spoken of in the old law books, but is peculiar to the use of a railroad which is usually a permanent improvement, a perpetual highway of travel and commerce, and will rarely be abandoned by nonuser. The exclusive use of the surface is acquired, and damages are assessed, on the theory that the easement will be perpetual; so that, ordinarily, the fee is of little or no value unless the land is underlaid by quarry or mine.'

My accusations of dishonesty and criminal behavior here must be understood to be my opinion.

> **Where the intention to convey a fee does not appear, as in case of the conveyance of a 'right of way' for the railroad through certain lands, the company takes an easement only. The fact that the right conveyed is designated as a fee, or that the deed contains covenants of warranty, does not necessarily pass the fee.**
> 1 Thompson on Real Property, SS 4:20.'"

With respect to *Ray* and *Rasmussen,* Judge Horn states "...without the guidance of the decision in Kershaw...those courts did not fully consider the importance of the phrase 'right of way' in the Hilchkanum deed". (*Beres v. United States*, Page 58) That statement by Judge Horn is **inconceivable** based on the citations above. For over one hundred years, Washington State common law has held that the court's duty is to enforce the intentions of the parties to a deed, and when the party's intention is to convey a right-of-way to a railroad, the deed is held to grant an easement. To my knowledge, no opinion prior to *Ray* and *Rasmussen* found that a railroad deed, which conveyed a "right of way" in its granting clause, granted fee simple title. If one exists, some very unusual contributing fact would need to be found controlling. For more than one hundred years before *Ray* and *Rasmussen,* judges were able to correctly construe railroad right-of-way deed granting language without the "Kershaw presumption", which Judge Horn finds so important to understand the easement-or-fee issue. Judge Horn's "Kershaw presumption" was not the reason the *Ray* and *Rasmussen* judges got the easement-or-fee issue wrong. The *Ray* and *Rasmussen* judges got it wrong because they chose to award ELS landowner's property to King County in violation of the law. This criminal act by these dishonest judges covered-up the East Lake Sammamish federal tax fraud scheme.

Page 59 to 61,

Starting on page 59 *of Beres v. United States* (2011), Judge Horn examines the extrinsic evidence. This is the "circumstances surrounding execution of the deeds and subsequent conduct of the parties". At an earlier time in Washington State, it was necessary for there to be ambiguity in the deed in order for this extrinsic evidence to be considered. As I understand, after Berg v. Hudesman, 115 Wn.2d 657, 801 P.2d 222 (1990) this is no longer a requirement due to the adoption of the "context rule". So, extrinsic evidence is allowed and considered with every deed construed. This seems more than fair to me, except when this information is manipulated, as it was with *Ray* and *Rasmussen*.

Authorship:

With respect to the "circumstances surrounding execution of the deeds", Judge Horn determines who is responsible for the words of the ELS right-of-way deeds. As a general rule, the words of a deed are construed against its author, or the lawyer who prepared the deed. Absent any evidence of authorship, as a general rule the words of a deed are construed against the grantor. In *Rasmussen* and *Ray*, all the judges decided that the Hilchkanums (grantors) were responsible for the words of their right-of-way deed. It was important for the *Rasmussen* and *Ray* judges to find the Hilchkanums responsible for the words of their right-of-way deed. If they admitted the truth that the SLS&E lawyers wrote the words of the Hilchkanum right-of-way deed, then the findings in *King County v. Squire* (1990) would have provided precedent which could not be ignored. The *Squire* SLS&E right-of-way deed was based on the same form deed which was used for the Hilchkanum SLS&E right-of-way deed. The Squired deed was determined to grant an easement based on the identical granting words used in the Hilchkanum deed. Authorship is a material fact. In *Rasmussen* and *Ray* there was no agreement with several important material facts, including authorship. Issues of material fact are resolved by a jury, not the judge. No jury was allowed to resolve the authorship issue in *Ray* or *Rasmussen.*

The authorship issue becomes the first domino in a domino chain reaction. The first "domino" represents the truth that the SLS&E lawyers prepared the ELS right-of-way deeds. Finding the SLS&E lawyers wrote the Hilchkanum deed leads the court to compare the SLS&E Hilchkanum deed to the SLS&E Squire deed. That leads to the understanding that both deeds grant a "right of way" to the SLS&E using the identical ELS SLS&E form deed language. In turn, that takes the court to the finding in *Squire* that the conveyance of the "right of way" grants an easement. These facts force the court to conclude the Hilchkanum right-of-way deed also grants an easement to the Railway. Since the Hilchkanum deed is identical to a number of other ELS deeds, they would also be understood to grant easements. If all these deeds granted easements, then the donation of the land under the BNSF ELS right-of-way to King County was fraudulent. With each logical step represented by a "domino" in the chain reaction, toppling the first "authorship domino" starts the chain reaction and the sequence which topples the rest. This exposes the East Lake Sammamish federal tax fraud scheme at the end of the chain. The *Rasmussen* and *Ray* judges stopped that "domino chain reaction" at the first "domino" by irrationally determining that the words of the Hilchkanum deed were not written by the Railway lawyers or the Railway's representative. Instead, in *Rasmussen* (2001) Judge Rothstein wrote that the Hilchkanums selected the granting words of their deed. This established them as author of their right-of-way deed. Judge Fletcher claimed Hilchkanum wrote his right-of-way deed "[w]ith the help of his friends". [A lie hidden in footnote 13 of *King County v. Rasmussen* (2002)] In *Ray* (2004), Judge Cox wrote that Hilchkanum was responsible for the words of his right-of-way deed based on Cox' bizarre conclusion that the notary

public, who copied the deed into the King County records at the request of the SLS&E lawyers, was author of the Hilchkanum deed and was not an agent of the Railway. Authorship is a material fact. Issues of material fact are resolved by a jury. Judges illegally deny the right to a jury when they want to control the outcome of a lawsuit. When they do that, ridiculous facts and bizarre conclusions appear, like findings of authorship I describe in *Rasmussen* and *Ray* above.

On page 59, Judge Horn concludes the SLS&E deeds were written by the Railway's lawyers.

> "Moreover, the record in this case contains exhibits which were not before the courts in Ray v. King County and King County v. Rasmussen. The record in this court contains six virtually indistinguishable, SLS&E Deeds and additional relevant exhibits.35 The records in Ray v. King County and King County v. Rasmussen included only the Hilchkanum deed and limited additional information. Moreover, the railroad's decision to follow what appears to be a pre-printed form, which was not in the form of statutory warranty deed, for all the SLS&E Deeds, and the apparent illiterate state of the majority of the source deed grantors, supports plaintiffs' argument that the form deeds were drafted by the railroad. Therefore, any ambiguity in the language of the deeds should be construed against the railroad." [*Beres v. United States*, Page 59]

Once again, Judge Horn implies that the *Ray* and *Rasmussen* judges came to a different conclusion about authorship because inadequate records were provided to the judges by the Rays and Rasmussens. In *Rasmussen* (2001), the problem was not the lack of "exhibits", as Judge Horn suggests in the above citation. The problem was that Judge Rothstein eliminated exhibits and arguments because she didn't want to consider information which contradicted her predetermined decision to award my land to King County. Both my lawyer and I noted that the Hilchkanums were illiterate Native Americans and, therefore, limited in their ability to participate in their 1887 right-of-way deed. We didn't feel it necessary to explain why Native American "Indians" were at great disadvantage in Washington Territory in 1887. Judge Rothstein struck both of our statements, insinuating we were racist. You would think this judge would have the character to face a party she accuses of being a racist and challenge that party to explain the statements she felt were inappropriate. She refused our many requests for oral arguments. But, I don't think she had any animus towards us. Rather, she had decided to award my land to King County and needed to eliminate as much of our legitimate argument as possible. Labeling my lawyer and me as racists was just a maneuver to justify her removal of our correct statements which disagreed with her lies. Rothstein slandered us because she needed an excuse to eliminate our statements which correctly described Hilchkanum as an illiterate Native American, and therefore at

a disadvantage to participate in an1887 railroad right-of-way deed written by educated white lawyers. Rothstein struck that portion of my declaration. She also struck my description of the ELS federal tax fraud scheme and most of the evidence (exhibits) I provided in support.

Judge Rothstein irrationally identified Hilchkanum as author of the granting language of his right-of-way deed with this statement:

> "Furthermore, because the Hilchkanums were homesteaders without a final patent, federal law limited them to certain types of conveyances, such as grants to schools, cemeteries, and rights of way to railways. See 17 U.S. Stat. 602. The Act provides more context for the choice of the term 'right of way' in the deed, indicating that **the Hilchkanums chose the phrase out of necessity rather than a desire to create an easement**."
> [*King County v. Rasmussen* (2001)] (my bold emphasis)

Judge Rothstein provides no document or historical reference to justify that ridiculous statement. She "establishes", as a fact, that the Hilchkanum's were highly qualified to understand the complexities of federal law and that they actually wrote the granting language of their right-of-way deed. Even after she struck our correct statements that Hilchkanum was illiterate, she must have observed that the Hilchkanums "signed" their names with an "X" on the Hilchkanum right-of-way deed. I'm assuming she actually looked at the deed she construed! We provided numerous documents to Judge Rothstein which proved that Hilchkanum was illiterate and was a Native American. She struck our statements, which she could have verified if she wanted the truth. Then, she simply made up the fact that the Hilchkanums wrote the granting clause of their right-of-way deed. She manufactured that lie without referencing any document or authority to justify her irrational concoction of that important material fact.

As I explained earlier, authorship is an important material fact because it ties the Hilchkanum deed to the Squire deed and the finding in *King County v. Squire* (1990) that the Squire deed granted an easement. I established my website, trailofshame.com, in 2008. On the website are two studies that relate to the issue of authorship of the Hilchkanum right-of-way deed. My argument in these studies, and the documentation I supply in support, agrees with Judge Horn's conclusions in *Beres* (2011). The first study, linked below, explains the form deed which was used for the ELS SLS&E right-of-way deeds and provides strong evidence that the Railway lawyers authored the words. The second study provides documents and discussion which explain the ability of the Hilchkanums to participate in their right-of-way deed. Both of these studies were written before Judge Horn issued *Beres* (2011), and neither have been updated to correspond

with Judge Horn's conclusions. If my right to a jury trial had been allowed, this is an argument and the documentation we would have presented to the jury.

Read a study explaining the ELS SLS&E form deed and identifying the author.

Understand the ability of the Hilchkanums to participate in their ROW deed.

Subsequent real estate deeds:

On page 49, Judge Horn examines seven Hilchkanum subsequent real estate deeds, and makes this comment:

> "In subsequent conveyances, the Hilchkanums described the right of way in terms of acres of land, and referenced the right of way without further description, and in some instances, without mentioning the phrase 'right of way' at all." [*Beres v. United States* (2011), Page 49]

Judge Horn observes Hilchkanum's inconsistency in the way he conveys these subsequent deeds and finally concludes:

> "The mention in 1898 of the right of way in the conveyance by Bill Hilchkanum to Annie Hilchkanum and also in the 1904 conveyance by Louise Hilchkanum to Chris Nelson, not far removed in time from the source deed conveyance to the SLS&E in 1887, however, is somewhat persuasive of an intent on the part of the source deed grantors to convey **only an easement** interest." [*Beres v. United States* (2011), Page 50] (with my emphasis)

Judge Horn states that her examination of Hilchkanum's subsequent real estate deeds suggests Hilchkanum's intention was to grant an easement with his 1887 right-of-way deed. This is a completely different conclusion than was made in *Rasmussen* and *Ray*, where the judges decided that Hilchkanum's subsequent real estate deeds prove his intention was to grant fee simple title with his 1887 right-of-way deed.

On page 60, Judge Horn makes up an excuse for Rothstein's [*King County v. Rasmussen* (2001)] and Fletcher's [*King County v. Rasmussen* (2002)] failure to understand Hilchkanum's intentions in his 1887 right-of-way deed through an examination of his subsequent real estate deeds. This irritates me because Judge Horn read those opinions and knew they were dishonest. She could have simply explained that the *Rasmussen* opinions were not binding on her, and said nothing more. Instead

she takes the ugly step of suggesting that my lawyer and I were negligent by not providing enough Hilchkanum subsequent deeds for Rothstein and Fletcher to come to the correct conclusion. She finishes her shameful excuse with this statement:

> "Without the benefit of the language in the additional subsequent conveyances made by the Hilchkanums and the other source deed grantors, which are in the record before this court, the District Court for the Western District of Washington and the Ninth Circuit were unaware of the 'right of way' language included in many of the subsequent conveyances."
> [*Beres v. United States* (2011), Page 61]

Judge Horn blames my lawyer and me with that statement. I'm certain that Judge Horn made that dishonest statement without reading our briefs or examining our exhibits for Rothstein and Fletcher. She has no idea of what exhibits were presented to Rothstein and Fletcher. So, how does she know that Rothstein and Fletcher lacked the information they needed to arrive at the correct conclusion? She dishonestly blames the victim, me! I discuss the dishonesty in the *Rasmussen* examination of the subsequent real estate deeds next.

King County v. Rasmussen (2001), and *King County v. Rasmussen* (2002) are blatant and obvious criminal acts from the bench. With respect to construing the subsequent real estate deeds, these two judges continued their dishonest maneuvers. The King County prosecutor claimed in his briefs that the Hilchkanums excepted the right-of-way land in their subsequent real estate deeds. In their opinions Rothstein and Fletcher repeat that lie. There is a difference in excepting a "right of way" and excepting "right of way land". There is no subsequent Hilchkanum deed which excepts the land under the right-of-way in the chain of title that we provided to these judges as exhibits. The subsequent Hilchkanum real estate deeds which contain an exception, except only the "right of way". In Washington State common law, the exception of a right-of-way in a real estate deed does not automatically except the conveyance of the land under the right-of-way. That is a misconception. Use the following hyperlink to understand.

Read a study explaining the meaning of the exception of a right-of-way in a deed.

We provided five Hilchkanum subsequent real estate deeds to Rothstein and Fletcher as exhibits. Two of the subsequent deeds excepted the "right of way". Three of the subsequent deeds did not excepted the "right of way". The deeds to Nelson, Sanders, and Herder do not except or mention the right-of-way. All five of these deeds are hyperlinked below. In the Nelson, Sanders, and Herder deeds, Hilchkanum conveyed to outside parties all of the land involved in the Rasmussen lawsuit. There is no exception of the right-of-way in these three deeds. Therefore, lacking any exception,

My accusations of dishonesty and statements of criminal behavior in this document must be understood as my opinion. I have been denied the right to legally establish these crimes as fact.

Hilchkanum conveyed the land under the SLS&E right-of-way with these three subsequent real estate deeds. Since Hilchkanum conveyed the land under the right-of-way with those three 1904 and 1905 deeds, one would assume that Hilchkanum believed he owned the land under the right-of-way when he conveyed it in 1904 and 1905. That would strongly imply that Hilchkanum did not earlier intend to convey that land to the SLS&E with his 1887 right-of-way deed. Based on these most relevant subsequent real estate deeds in the chain of title to my land, the Hilchkanum right-of-way deed granted an easement to the SLS&E. Of course, Ninth Circuit Judges Rothstein and Fletcher refused to admit the significance of these subsequent Hilchkanum real estate deeds which did not except the right-of-way. Ninth Circuit Judge Rothstein stated that all the Hilchkanum subsequent real estate deeds excepted the right-of-way land. That is a lie because, as I describe above, the most significant subsequent deeds did not except the right-of-way, and no subsequent real estate deed excepted land. Open this link for more explanation.

> *King County v. Rasmussen* (2001), read Judge Rothstein's **dishonest analysis of exception language,** and my counter argument.

Ninth Circuit Judge Fletcher acknowledged that one Hilchkanum subsequent real estate deed lacked an exception for the right-of-way, but ignored the significance of that deed and dishonestly declared it to be “not significantly probative”. She refused to admit that, in the subsequent real estate deed to Chris Nelson, Hilchkanum sells the land under the right-of-way, because the deed has no exception withholding the land or the right-of-way. If Fletcher had admitted that Hilchkanum sold land under his right-of-way in his deed to Chris Nelson, then she would then need to explain the inconsistency with her determination that Hilchkanum had previously granted that land to the SLS&E in 1887 with his right-of-way deed.

Read these Hilchkanum subsequent real estate deeds. The first two are between the Hilchkanums as husband and wife. The bottom three convey all the land involved in my lawsuit to outside parties. In the Nelson, Sanders, and Herder links, I provide graphics and documentation which will help the reader understand the complete dishonesty of Judges Rothstein and Fletcher in claiming the Hilchkanums excepted the land under the right-of-way in their subsequent real estate deeds because they had previously granted that land to the SLS&E.

> December 16, 1898 Bill Hilchkanum conveyance to **wife Annie**

> August 25, 1899 Annie Hilchkanum conveyance to **husband Bill**

> March 15, 1904 Bill Hilchkanum conveyance to **Chris Nelson**

My accusations of dishonesty and criminal behavior here must be understood to be my opinion.

September 3, 1904 Bill Hilchkanum conveyance to **Edward Sanders**

June 30, 1905 Bill Hilchkanum conveyance to **John Herder**

Here, again, are links which will explain the dishonesty of the *Rasmussen* and *Ray* judges when they addressed the issue of Hilchkanum's subsequent real estate deeds in their opinions.

King County v. Rasmussen (2001), read Judge Rothstein's **dishonest analysis of exception language,** and my counter argument.

King County v. Rasmussen (2002), read Judge Fletcher's **dishonest analysis of exception language,** and my counter argument.

Ray v. King County (2004), read Judge Cox' **dishonest analysis of exception language,** and my counter argument.

Secondary Grant:
"...cut down all trees dangerous to the operation of said road."

On Page 61 and 62, Judge Horn discusses the secondary grant which allowed the SLS&E to go 200 feet on each side of the track to cut down trees which threatened the safe operation of the Railway. Horn concludes her discussion of the tree cutting secondary grant with this statement favoring the plaintiffs (ELS landowners):

> "This court agrees that the language on which the defendant relies in the SLS&E Deeds does not support the position that the grantors intended to convey a fee interest to the railroad." [*Beres v. United States* (2011), Page 62]

In *Rasmussen* and *Ray* the judges dishonestly decided that this tree cutting secondary grant somehow supported their conclusion that Hilchkanum granted fee simple title with his 1887 right-of-way deed. As cited above, Judge Horn found that this secondary grant did not suggest that the Hilchkanums and other SLS&E grantors intended to grant fee simple title with their SLS&E right-of-way deeds. This secondary grant was found in all the East Lake Sammamish SLS&E deeds and used identical language.

I discuss the dishonesty of the *Rasmussen* and *Ray* judges with respect to the secondary grant. Use the following hyperlinks to understand:

Judge Rothstein is **dishonest with her discussion of the secondary grant** in *Rasmussen*.

Judge Fletcher is **dishonest with her discussion of the secondary grant** in *Rasmussen*.

Judge Cox is **dishonest with his discussion of the secondary grant** in *Ray*

Judge Horn's Summary of SLS&E deeds:

On Page 62, Judge Horn summarized her analysis of the easement-or-fee issue with the six SLS&E deeds she construes. This is the Summary paragraph:

> "Although defendant offered a number of arguments to demonstrate that this court should find the SLS&E Deeds conveyed fee interests, none of the arguments are compelling enough to overcome the Kershaw presumption in favor of an easement, triggered by the phrase "right of way" used in the SLS&E Source Deeds. After analysis of the seven plus two Brown factors, this court concludes that the language of the source deeds was intended to convey easements to the SLS&E. Because of the additional information in the record, and because this court concludes that the railroad, and not the source deed grantors, drew up the deeds, executed, for the most part, by illiterate landowners, any ambiguity in the SLS&E Deeds must be interpreted in the grantors' favor. Combined with the Kershaw presumption in favor of an easement interest when the phrase 'right of way' is used, the contemporaneous understanding of the phrase "right of way" at the time the source deeds were executed, reinforced by a contemporaneous legal dictionary, contemporaneous news media, and the close in time DOI decision, this court concludes that the SLS&E Deeds conveyed easements only to the railroad. The plaintiffs in Schroeder, Chamberlin, Klein, Peterson, Spencer, Lane, Nelson, and Collins may pursue their causes of action for a Fifth Amendment taking." [*Beres v. United States* (2011), Page 62]

My comments on Judge Horn's above SLS&E summary:

In Judge Horn's above summary of the easement-or-fee issue with the six SLS&E deeds, she finds against the defendant's (United States) argument which appears to be based mostly on the findings in the dishonest *Ray* and *Rasmussen* opinions. I'm thankful that Judge Horn is honest and correct with her application of the law and the facts. But, sadly I see her emphasis on the "Kershaw presumption" in this

summary and throughout her opinion as a phony excuse she builds to protect the *Rasmussen* judges, *Ray* judges, and the judges of the Washington State Supreme Court. I discuss this above on Pages 28 to 33 of this document.

In the same light, Judge Horn finds unreasonable importance in the "seven plus two *Brown* factors". She implies that she needed those factors in order to arrive at a different conclusion than the *Rasmussen* and *Ray* judges. The "seven *Brown* factors" were copied by the *Brown* judges from *Swan v. O'Leary* (1950). These seven factors provide no new precedent. They simply list the considerations used in construing a railroad deed. The "...plus two *Brown* factors" are the "circumstances surrounding execution of the deeds and subsequent conduct of the parties" which is the extrinsic evidence considered along with the deed. These two additional factors were identified in *Scott v. Wallitner* (1956) and have been referenced as precedent ever since. So the "seven plus two *Brown* factors" have been legal precedent in Washington State for more than fifty years and these factors were briefed to the *Rasmussen* and *Ray* judges. I discuss this above on Page11 of this document.

Next, Judge Horn explains she finds easements were granted because "...of the additional information in the record, and because this court concludes that the railroad...drew up the deeds...". This caused her to construe any ambiguity in the deeds against the SLS&E Railway. She implies that the *Rasmussen* and *Ray* judges lacked sufficient documents to make the same decision. I see this as another phony excuse protecting the *Rasmussen* and *Ray* judges, and I explain this in greater detail on Page 8 of this document.

Judge Horn concludes her summary of the SLS&E deeds with this statement: "... the contemporaneous understanding of the phrase "right of way" at the time the source deeds were executed, reinforced by a contemporaneous legal dictionary, contemporaneous news media, and the close in time DOI decision, this court concludes that the SLS&E Deeds conveyed easements only to the railroad." I suspect that these last three contributing factors were briefed equally well in *Ray* because the Ray's attorney, John Groen, was the attorney representing the parties before Judge Horn, too.

Page 62. Starting on page 62 *of Beres v. United States* (2011), Judge Horn construes the 1904 Reeves Quit Claim Deed to the Northern Pacific Railway Company in order to determine easement or fee. My interest is in the six SLS&E right-of-way deeds, so I'll simply observe that Judge Horn determines that the Reeves deed conveyed an easement, just as the other ELS deeds conveyed easements in the *Beres* lawsuit.

On page 70, Judge Horn summarizes her whole opinion with a short statement finding in favor of the plaintiffs (ELS landowners) and stating that they "...may proceed with their causes of action for a Fifth Amendment taking."

John Rasmussen's Summary of *Beres* (2011):

I'm thankful that Judge Horn correctly construed the 1887 SLS&E right-of-way deeds to convey easements. This allows compensation for some of the ELS landowners victimized by King County. I'm frustrated that the majority will never receive compensation. It is also frustrating that I should feel thankful for a judge correctly applying the law. We should expect and demand that our judges always honestly and correctly apply the law, but that isn't happening in our courts. *Beres* (2011) correctly applies the Washington State common law used to construe railroad deeds which has been consistently applied for over one hundred years, with the exception of the *Ray v. King County* and *King County v. Rasmussen.* As I explain throughout this document, and on my trailofshame.com website, *Ray* and *Rasmussen* are criminal acts from the bench which protect powerful people in Washington Sate from being held responsible for their participation in the East Lake Sammamish federal tax fraud scheme and the theft of land from innocent ELS landowners.

In her summary, and throughout this opinion, Judge Horn makes phony excuses for the judges who committed criminal acts against the Rays and my family in the *Ray* and *Rasmussen* opinions. (Hilchkanum opinions) Since the defendant (United States) cited the *Ray* and *Rasmussen* opinions as precedent, it was important for Judge Horn to find differences in order to justify her finding the Hilchkanum and other SLS&E right-of-way deeds granted easements. But, Judge Horn never criticizes the *Ray* or *Rasmussen* judges. Further, she is never critical of the judges of the Washington State Supreme Court who failed to correct *Ray* on appeal. Instead, in places she blames the victims of *Ray* and *Rasmussen* for the finding of a fee simple conveyance in those opinions. She blames me for the crime committed against me by Federal Judges Rothstein and Fletcher. This irritates me after having my land stolen and my right to due process denied by these crooked judges. It's acceptable for Judge Horn to not criticize her fellow judges. But laying blame on the victims of her fellow judges is dishonest, unfair, and unacceptable.

Judge Horn states that she had many more documents to use in determining the effect of the deeds presented in *Beres*. This implies that the judges in *Ray* and *Rasmussen* were not provided sufficient documents to reach the same conclusion she makes in *Beres*. This is an example of "blame the victim", which I describe above. I'm John Rasmussen and I know that, in *King County v. Rasmussen,* sufficient documents

and briefing were submitted that should have forced the *Rasmussen* judges to come to the same conclusions Judge Horn makes in *Beres*. I'm confident that the Rays also provided adequate documentation. The Ray's attorney represented the plaintiffs in *Beres,* so it is likely the documents he submitted to Judge Horn were the same that he submitted in *Ray.* It is true that documentation for five more SLS&E deeds was submitted in *Beres*. The issue is not the number of pieces of paper presented in the lawsuits. The issue is quality of the exhibits and whether they support arguments made in the briefings. The problem with the *Ray* and *Rasmussen* judges was not a lack of documents. The problem was a lack of honesty by the *Ray* and *Rasmussen* judges. This includes the judges of our Washington State Supreme Court.

Judge Horn claims that *Kershaw* gave her guidance that the *Ray* and *Rasmussen* judges lacked. I believe she made this claim because she had requested guidance from the judges of our Washington State Supreme Court and then did not agree with their advice to use *Ray v. King County* (2004) and *Brown v. State of Washington* (1996) as precedent. In order to take a fresh look at the issues, she used the fact that *Kershaw* was decided after our Washington State Supreme Court advised her to adopt the findings in *Ray.* Judge Horn emphasizes the use of the word "presumption" in her analysis of *Kershaw*. She implies that the significance of the words "right of way" in the granting clause of a railroad deed was not full understood until *Kershaw.* **That is ridiculous.** Her emphasis on the "*Kershaw* presumption" appears to be an excuse to find the SLS&E deeds grant easements without exposing the dishonesty of the *Ray* and *Rasmussen* judges. There is no new precedent established in *Kershaw*. *Brown, Morsbach, Swan, Veach,* and *Roeder* are cited for authority in *Kershaw*. The precedent used in those same five opinions was briefed in *Rasmussen,* and I'm certain was also briefed in *Ray*. The use of the term "right of way" has always been the primary consideration in determining easement-or-fee in railroad deeds in Washington State/Territory. Judges understood and correctly construed the meaning of the term "right of way" in the granting clause of railroad deeds for a hundred years before the dishonesty misconstruing of that term by the *Ray* and *Rasmussen* judges. So, lack of understanding of the meaning of "right of way" in a railroad deed wasn't the reason that the *Ray* and *Rasmussen* judges got it wrong. Their problem was not a lack of understanding railroad right-of-way law or the fact that *Kershaw* was not available for guidance. Their problem was simply a lack of honesty. I discuss *Kershaw* and the "Kershaw Presumption" on pages 28-33 of this document, above.

Continuing with Judge Horn's analysis of the words of the deeds, she found that the term "right of way" in the granting clauses of the SLS&E deeds was an overpowering indication that the deeds granted easements. In contrast, the *Ray* and *Rasmussen* judges decided that the words "right of way" in the granting clause really meant "strip of land". "Strip of land" in the granting clause of a railroad deed has always

been understood to grant fee simple title. "Right of way" in the granting clause of a railroad deed has always been understood to grant an easement. There is no precedent that suggests it's the option of a judge to change the critical words in a deed in order to change what is granted. But, the *Ray* and *Rasmussen* judges did exactly that. Judge Horn refused to join them in that dishonesty, despite the "advice" of our Washington State Supreme Court to adopt the findings in *Ray*. I discuss this issue on pages 17 through 23, above.

Authorship of the SLS&E deeds was an important material fact as I explain starting on page 34 of this document. In *Beres*, Judge Horn correctly identifies the SLS&E lawyers as author of the form deed used for the six SLS&E deeds, and therefore construes the words of the deed against the Railway. In *Ray* and *Rasmussen* the judges irrationally construed the words of the deed against the grantor, the Hilchkanums. In *Rasmussen,* the judges irrationally and dishonestly named the Hilchkanums as author. In *Ray*, the judges named the notary public as author and claimed that he was not an agent for the Railway. These lies by the *Ray* and *Rasmussen* judges were necessary to avoid a comparison with *Squire*. The Squire right-of-way deed to the SLS&E was based on the identical form deed used for the SLS&E deeds in *Beres*, and was found to grant an easement. By refusing to admit the Hilchkanum deed was written by the Railway lawyers, the *Ray* and *Rasmussen* judges avoided their duty to adopt the precedent in *Squire* finding an easement was conveyed. Finding the Hilchkanum right-of-way deed granted fee simple title was necessary to cover-up King County's participation in the East Lake Sammamish federal tax fraud scheme. Whether intentionally or unintentionally, the *Ray* and *Rasmussen* judges abandoned one hundred years of legal precedent and provided that favor for King County.

The subsequent real estate deeds were misconstrued in *Ray* and *Rasmussen* to falsely explain the Hilchkanum's intention to convey fee simple title with their 1887 right-of-way deed to the SLS&E. The *Ray* and *Rasmussen* judges dishonestly claimed that the Hilchkanums excepted the right-of-way land in their subsequent deeds because they had previously conveyed the land to the SLS&E with their 1887 right-of-way deed. The *Ray* and *Rasmussen* judges refused to admit that the subsequent deeds, which did not except the right-of-way, suggested the Hilchkanums intended to grant an easement to the SLS&E, not fee simple. To avoid admitting the likelihood that an easement was conveyed to the SLS&E, Judges Fletcher and Cox declared the subsequent deeds which did not contain an exception for the right-of-way to be "not probative" of the Hilchkanum's intent. In doing this, Fletcher and Cox eliminated consideration of the subsequent deeds which destroyed their dishonest argument. Judge Horn looked at the subsequent real estate deeds and did not find an intention of the Hilchkanums and other SLS&E grantors to convey fee simple title with their right-of-way deeds. Judge Horn

had more subsequent Hilchkanum real estate deeds to consider for her opinion. But in *Rasmussen,* we provided five Hilchkanum subsequent real estate deeds which were sufficient to understand the issue. Two of the Subsequent deeds excepted the "right of way", and three did not. In the discussion beginning on Page 37 of this document, I explain the dishonesty of the *Ray* and *Rasmussen* judges in ignoring the three subsequent real estate deeds which did not except the ROW.

In this document, I analyze Judge Horn's *Beres v. United States* (2011) opinion and compare her method and results to the dishonest manipulations of fact and law by the judges in *Ray v. King County* and *King County v. Rasmussen*. I applaud Judge Horn for honestly and correctly applying Washington State common law to find the 1887 Hilchkanum deed to the SLS&E granted an easement. I criticize Judge Horn for dishonestly making excuses for the judges who committed criminal acts from the bench with their *Ray* and *Rasmussen* opinions. The *Ray* and *Rasmussen* judges stole land and hid the East Lake Sammamish federal tax fraud scheme with their dishonest opinions. Judge Horn's protection of theses dishonest judges is not helpful for our system of justice. Apparently Judge Horn felt a need to explain why she refused to adopt the findings in *Ray* and *Rasmussen*. Unwilling to lay the blame on the criminal acts committed by the *Ray* and *Rasmussen* judges, Judge Horn instead laid the blame on the victims of the dishonest *Ray* and *Rasmussen* opinions. Judge Horn implied that the victims did not supply enough documents to the *Ray* and *Rasmussen* judges for the judges to come to the correct conclusions. Ridiculous! I'm certain that she didn't review the documents that were provided the *Ray* and *Rasmussen* judges. Judge Horn claimed that the *Ray* and *Rasmussen* judges were unable to understand the correct application of the law because they didn't have the guidance provided by the *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006) opinion. She doesn't explain why judges were able to correctly apply that law for over one hundred years before the dishonest *Ray* and *Rasmussen* opinions. Further she doesn't admit that *Kershaw* referred to precedent that had been established for over fifty years, and that *Kershaw* did not provide any new precedent. With respect to the effect of excepting the right-of-way in subsequent real estate deeds, Judge Horn again claimed that she had additional documents that allowed her to conclude that this exception language suggested the original right-of-way deeds were easements. She implied that the *Ray* and *Rasmussen* judges were not provided adequate documents to come to her conclusion. The truth is that the *Ray* and *Rasmussen* judges refused to consider the documents which were provided. The problem was not a lack of documents. The problem was an intentional misinterpretation of the subsequent real estate deeds by the *Ray* and *Rasmussen* judges. In Judge Horn's analysis of *Kershaw*, she protected the judges of our Washington State Supreme Court when they provided dishonest analysis of *Ray*. This dishonest analysis covered-up our Supreme Court's failure to correct *Ray* on appeal. Judge Horn minimized this dishonesty by implying our Supreme Court

judges just made a small error and that their explanation was "not persuasive". The truth is that the judges of our Washington State Supreme Court, who failed to correct *Ray*, participated in the cover-up of the East Lake Sammamish federal tax fraud scheme and should have been held accountable for their criminal act. I believe they should be in federal prison for their participation in the crime. But, that's just me, a victim.

All considered, the fact that Judge Horn found easements with the SLS&E deeds she construed is commendable and I thank her for her honesty in applying the law and the facts.

Go to ***Beres v. United States* (2011)**